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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1967

No. 597

UNITED STATES OF AMERICA, APPELLANT

v.

UNITED SHOE MACHINERY CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

FILED SEPTEMBER 8, 1967
PROBABLE JURISDICTION NOTED DECEMBER 4, 1967

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* Witnesses subpoenaed by the defendant during the closing days of the trial were requested to submit additional information to the parties. This material submitted after trial was stipulated in Stipulation No. 7, subsequently received in evidence as part of the record (Hearing of January 24, 1967, Tr. 11-12). The revenue tables as revised to include changes required by the stipulated material were appended as a part of the Government's Post-Trial Brief in accordance with the court's suggestion and after inspection by counsel.

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UNITED STATES *v.* UNITED SHOE MACHINERY CORPORATION

DECREE OF THE COURT

As Modified—July 12, 1954.

Amendments have been made only in Paragraphs 1, 6, 6(h), 6(i), 6(j), 7, 12, 13, 14, and 20.

This cause having come on to be heard, and the Court having fully considered the evidence and arguments, and having filed its Findings of Fact, and Opinions on Violation and Remedy, it is hereby

Ordered, Adjudged, and Decreed that:

1. As used in this Decree:

"A Day" means January 1, 1955.

"B Day" means April 1, 1955.

"C Day" means January 1, 1965.

"Shoe Machinery" means all types of shoe machinery distributed to shoe factories for use in the manufacture or repair of footwear, except dry thread sewing machines.

The words "machine type," "machines" and "machine" as used in this Decree mean "shoe machinery" as defined herein.

The word "supplies" as used in this Decree means all products, when distributed by defendant for use or consumption by shoe factories, of the types heretofore classified by the defendant as sales merchandise.

The word "patent" as used in this Decree means a United States patent for an invention relating to the manufacture, use or sale of footwear, shoe machinery or supplies.

2. Defendant violated Sec. 2 of the Sherman Act, 15 U.S.C. Sec. 2, by monopolizing the shoe machinery trade and commerce among the several States. Defendant violated the same section of the law by monopolizing that part of the interstate trade and commerce in tacks, nails, and eyelets, which is concerned with supplying the demand for those products by shoe factories within the United States. The other charges of violation of the Sherman Act set forth in the complaint are dismissed

with prejudice. No obligation of the defendant under this decree shall apply to its manufacturing, distribution, service, patent or other activities in any industry other than shoe machinery and supplies or in relation to any industry other than the shoe manufacturing industry.

3. Defendant, its subsidiaries, and each of their directors, officers, agents, and employees, and, all persons acting for them are hereby enjoined and restrained from further monopolizing those parts of the trade or commerce among the several States which have been referred to in the previous paragraphs.

4. All leases made by defendant which include either a ten-year term, or a full capacity clause, or deferred payment charges, and all leases under which during the life of the leases defendant has rendered repair and other service without making them subject to separate, segregated charges, are declared to have been means whereby defendant monopolized the shoe machinery market.

5. After A Day, defendant shall not offer for lease any machine type, unless it also offers such type for sale. Defendant, if it offers any machine type for lease, shall set such terms for leasing that machine as do not make it substantially more advantageous for a shoe factory to lease rather than to buy a machine. Defendant shall not be required to secure advance judicial approval of the financial terms in sales or lease contracts. But if any lease or contract substantially discriminates in favor of leasing, plaintiff may apply to this Court for further specific relief.

6. Before A Day, defendant, if it desires to continue to lease any shoe machinery, shall file in this Court a standard form of lease that meets the following directions. Other standard forms of lease shall be filed in this Court by defendant promptly as they are printed and before defendant places them in use.

a. The maximum term for either an original or renewal lease shall be five years.

b. Provision shall be made that a lessee shall have the right to return the leased machine at any time after one year, on paying all rentals already accrued, the shipping charges, the cost of broken and missing parts, and in addition, no more than the equivalent of the monthly

(not the unit) payments which would have been due had the lessee kept the machine for an additional three months. The lease may provide for return on terms more favorable to the lessee if the return is due exclusively to defects in the machine, or customer dissatisfaction after a trial period, or customer abandonment of operations. But no return charge shall discriminate on account of the substitution of a competitive machine.

c. The new forms of lease shall not include any return or deferred payment charges other than those specified in the previous paragraph. But they may include provisions for initial charges and deposits.

d. Defendant may, if it sees fit, use a unit charge in addition to, or as an alternative to, monthly rental charges. But such unit charges shall have no minimum.

e. After A Day, defendant shall not include within any lease, whether unit charges are used or not, a full capacity clause, or any equivalent.

f. After A Day, defendant shall not include either in the terms of, or the application of, any lease any plan similar to the right of deduction fund which it has heretofore established, or the 1935 Plan which it adopted for lessees desiring to return machinery.

g. Defendant shall not be obliged to present to the Court a statement of what will be the amount of, or method of calculating, its rentals, its charges, deposits, or like financial terms. But, after A Day, in preparing, executing, or applying its leases, defendants shall not discriminate between customers of the same general class, except that defendant may make different deposit provisions for different persons, upon an individual basis.

h. Defendant may propose various uniform lease riders to provide for peak-load or trial installations. Defendant may also use various loan forms to cover installation of experimental or other machines for which commercial terms have not been adopted. All such riders and forms shall comply with the preceding paragraphs.

i. Each lease shall expressly state what services and privileges it covers. After A Day, defendant may render, without separate charges, instruction services, installation services, repair services, or other services, during a

period of 30 days, exclusive of Saturdays, Sundays and holidays, after the machine has been first installed and set up in line for use in shoe manufacture. After such 30-day period defendant shall not provide any such services for a machine covered by a lease, except during the first 60 days, exclusive of Saturdays, Sundays and holidays, of a trial installation period covered by a lease trial rider as above provided, other than upon the basis of separate and reasonable charges for the services rendered, and the permission to render service for machines covered by lease trial riders herein contained shall be subject to the condition that similar service is made available for trial installations of machines whether to be leased or to be sold.

j. Defendant shall not vary the substance of the forms of lease submitted to the Court, without the Court's approval, but defendant may, without submitting them to the Court, use such special forms of lease or loan agreements as may be appropriate to the requirements of Federal, State or local governmental agencies and of educational institutions not engaged in the manufacture of footwear for profit. This provision shall not be interpreted as requiring defendant to secure advance judicial approval of the dollars and cents figures used in setting monthly rental charges, unit charges, deposits, or other specifically fiscal aspects of the lease.

7. Except for good cause, defendant shall not after A Day refuse a prospective customer's request to lease or buy a machine, of a type which defendant is at the time of such request offering for commercial lease or sale. In the event that a prospective customer is refused the privilege of buying or leasing a machine, he shall have the right to intervene in this case in this Court to have his controversy adjudicated, and in such proceedings, defendant shall have the burden of proving that there is good cause for refusing to make the sale or lease.

8. Before A Day, defendant shall present to the Court, if it desires to continue to render repair and other services, a tariff of the charges which it proposes to apply for rendering service. This service tariff shall have uniform charges for leased and sold machines. It may take

into account travel time as well as time used in making repairs or rendering other services. It may recognize any economy defendant actually realizes in its business on a quantity basis, or any other economies in servicing customers of a particular type, or customers who commit themselves for particular periods of time, in any event, however, not exceeding twelve months at a time. Neither the tariff nor this Decree shall be interpreted as requiring defendant to render services in connection with machines, or parts, not of its manufacture. The tariff shall provide that parts shall be made available on the same terms to customers receiving services, customers not receiving services, and any other person; provided, however, that defendant shall not be obliged to furnish parts to a customer to help him construct an entire new machine out of assembled parts.

9. Before B Day, defendant, after conferring with plaintiff, with representatives of The National Shoe Manufacturers Association, and with any lessees who previous to B Day have intervened in these proceedings, shall present to the Court a detailed plan for terminating all outstanding leases. This plan shall make appropriate non-discriminatory financial provisions for defendant's rights and each lessee's rights in connection with the termination of existing leases. It shall also make non-discriminatory provisions under which, within a reasonable period of time, lessees under leases existing before B Day may buy or lease those machines which have been installed. Such provisions shall be at least as favorable to shoe factories as the provisions in the new lease and sale forms.

10. Before B Day, defendant shall submit a plan for disposing of such parts of its business and the business of its subsidiaries as are concerned with the manufacture or distribution of tacks, nails, and eyelets.

11. Beginning three years after A Day, defendant shall not distribute any supplies not manufactured by itself or a corporation in which it owns at least 20% of the Common Stock, provided that this shall not apply to supplies acquired by United before then.

12. Defendant shall grant to any applicant, except a deliberate infringer, a non-exclusive license under any or

all patents now held by defendant on reasonable non-discriminatory royalty terms. Such licenses may, however, be limited to the manufacture, use, and sale of shoe machinery, shoe supplies, and like products used in shoe factories. Such licenses may contain a provision for the inspection of the records of the licensee by an independent auditor who shall report to the licensor only the amount of royalty due and payable and no other information. Such licenses shall contain a provision for imparting in writing, at a reasonable charge by the licensor to the licensee, the methods and processes used by defendant as of the date of this Decree in its commercial practices under the patents licensed. This Court reserves jurisdiction to pass upon the reasonableness of any royalty or charge herein directed to be reasonable. Nothing in this paragraph applies to patents issued upon the basis of applications filed later than A Day, nor shall anything herein prohibit defendant from making a bona fide sale or assignment from time to time of any patent held by it.

13. After A Day, defendant shall not acquire any patent or patent application except patents or patent applications acquired by reason of bona fide employment of the inventor by it or by a subsidiary unless defendant files in this Court an agreement to license that patent or patent application as provided in the previous paragraph with respect to patents it now owns.

14. After A Day, defendant shall not acquire any exclusive license under any patent or patent application unless such exclusive license grants defendant the right to license others and defendant promptly files in this Court an agreement to license as provided in Paragraph 12 of this Decree.

15. After A Day, defendant shall not acquire any shoe machinery business, any business manufacturing or distributing supplies for shoe factories, or any part thereof, or any stock therein, if the transaction involves more than $10,000 or its equivalent.

16. After A Day, defendant shall not buy or acquire any second hand shoe machinery manufactured by it or any other person except for experimental or like purposes. The total acquisitions under this paragraph in any

one year shall not represent an expenditure of more than $25,000, or its equivalent. Nothing in this paragraph shall be construed to apply to such rights as defendant may have to repossess, or to acquire at public auction, machines which it has conditionally sold and which the purchaser has lost the right to retain.

17. After A Day, defendant shall not continue any plan for quantity discounts in connection with any of its supplies, unless such discount system complies with all applicable laws.

18. On C Day, both parties shall report to this Court the effect of this Decree, and may then petition for its modification, in view of its effect in establishing workable competition. If either party takes advantage of this paragraph by filing a petition, each such petition shall be accompanied by affidavits setting forth the then structure of the shoe machinery market and defendant's power within that market.

19. Defendant shall pay the costs of this case.

20. On or before October 1, 1954, defendant shall send to each of its then lessees a written copy of this Decree as modified prior to the date of mailing.

21. Nothing in this Decree shall impose any obligation on defendant until three months before A Day.

22. Nothing in this Decree shall impose any obligation on defendant or its subsidiaries to do or omit any action outside the United States.

23. Jurisdiction of this cause is retained for the purpose of enabling either of the parties to apply to this Court at any time for such further orders and directions as may be appropriate for the correction, construction, or carrying out of this Decree, and to set aside the Decree and take further proceedings if future developments justify that course in the appropriate enforcement of the Anti-Trust Act.

DATE	PROCEEDINGS
12/29/64	Petition of United Shoe Machinery Corporation for Amendment of Decree with . . . Affidavits . . . filed.
12/31/64	Pltf's Petition for Modification of Final Decree filed.
9/27/65	Stipulation No. 1 filed.
5/25/66	Stipulation No. 3 filed.
9/16/66	Stipulation No. 4 filed.
10/28/66	Transcript of Oct. 27, 1966 filed.
11/ 4/66	Stipulation No. 6 offered.
4/11/67	Opinion filed.
4/11/67	Order entered.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 7198

UNITED STATES OF AMERICA, PLAINTIFF

v,

UNITED SHOE MACHINERY CORPORATION, DEFENDANT

PETITION FOR MODIFICATION OF FINAL DECREE

The plaintiff, United States, acting by its duly authorized attorneys, states:

1. On February 18, 1953, this Court entered a Final Decree in the above-entitled action, which Final Decree was amended on July 12, 1954 and September 17, 1954.

2. Paragraph 18 of said Final Decree, as amended, provides:

> 18. On C Day [January 1, 1965], both parties shall report to this Court the effect of this decree, and may then petition for its modification, in view of its effect in establishing workable competition. If either party takes advantage of this paragraph by filing a petition, each such petition shall be accompanied by affidavits setting forth the then structure of the shoe machinery market and defendant's power within that market.

3. Pursuant to the requirements of Paragraph 18, above, the plaintiff did, on or before January 1, 1965, report to the Court the effect of the Court's Decree.

4. Plaintiff further obtained, and incorporated in said report, such facts as show the present structure of the shoe machinery market and defendant's power within that market.

5. On the basis of the attached affidavit, the aforesaid report and the aforesaid facts, plaintiff moves the Court:

(1) To find that the Court's Final Decree has not been effective in establishing workable competition in the shoe machinery market.

(2) To find that the defendant, United Shoe Machinery Corporation, still has and exercises monopoly power in the shoe machinery market.

(3) To require the defendant, United Shoe Machinery Corporation, to submit to the Court a plan, pursuant to which the defendant shall establish an independent, full-line shoe machinery manufacturing company capable of competing with the defendant in the shoe machinery market.

(4) To hold such hearings regarding said plan as shall be necessary to assure that said plan is feasible and equitable, does not result in a forfeiture to defendant's stockholders, and promises a fair chance of said new company being able to survive and compete with defendant in the shoe machinery market.

(5) For such other and further relief as may be necessary to establish workable competition in the shoe machinery market.

Dated: December 31, 1964

/s/ ALFRED KARSTED

/s/ W. RANDOLPH ELLIOTT
Attorneys, Department of Justice

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 7198

UNITED STATES OF AMERICA, PLAINTIFF

—against—

UNITED SHOE MACHINERY CORPORATION, DEFENDANT

PETITION OF UNITED SHOE MACHINERY CORPORATION FOR AMENDMENT OF DECREE

Upon the final decree filed February 18, 1953 as modified by orders of the Court filed July 12 and September 17, 1954, the Plan for Terminating Form A Leases approved by the Court by order dated June 1, 1955, defendant's Report to the Court dated December 15, 1964, Appendices A through G thereto, and the annexed affidavits of the following persons sworn to on the following dates respectively—

James Forma	August 27 1964
Francis H. Gleason	September 4 1964
John R. DeWitt	September 4 1964
George M. Haddad	September 6 1964
John S. Zulick	September 6 1964
Rudolph (Rolf) Bieringer	September 9 1964
Milton M. Isenberg	September 18 1964
Richard P. Curtis	September 29 1964
Milton Carmel	September 30 1964
Harvey Steffy	September 30 1964
Abraham B. Rubin	September 30 1964
Harold Goldberg	September 30 1964
Samuel L. Slosberg	October 5 1964
Samuel Wolff	October 22 1964
T. R. Volenetz	October 23 1964
Edward J. Riley, Jr.	October 29 1964
Robert S. Lockridge	November 9 1964
Julian Samuels	November 12 1964
Adolph K. Krause	November 24 1964

Wallace J. McGrath	November 27 1964
Abraham Weinman	December 10 1964
Irving Katz	August 27 1964
Milton Heimlich	September 17 1964
Merwin F. Ashley	December 2 1964
Henry L. Waelter	December 2 1964
Richard F. Unger	December 11 1964
Donald F. Sinclair	December 15 1964
Alan E. Snow	December 17 1964
Alan W. Sampson	December 17 1964
Max W. Tetlow	December 21 1964
Karl S. Craig	December 15 1964
John W. Pratt and Andrew S. Kahr	December 21 1964

United Shoe Machinery Corporation respectfully petitions the Court pursuant to par. 18 of said decree for a finding and determination that workable competition in shoe machinery has now been established, for the vacating and setting aside of said decree accordingly, and for the entry of an amended decree in the form annexed hereto.

UNITED SHOE MACHINERY CORPORATION

By CHOATE, HALL & STEWART

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Attorneys for Defendant

Boston, Mass.

December 23, 1964

PROPOSED AMENDED DECREE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[SAME TITLE]

The parties having filed their reports to the Court pursuant to par. 18 of the decree herein dated February 18 1953 as modified by orders of the Court dated July 12 and September 17, 1954, hearings thereon having been had, and the Court having found and determined that workable competition in shoe machinery as defined in said decree and underlying findings has now been established, it is

ORDERED AND DECREED:

1. The said decree of February 18, 1953 as modified has now effected its purpose and is vacated and dissolved.

2. Until further order of the Court pursuant to par. 3 hereof defendant—

(a) shall not offer for lease any machine type unless it also offers such type for sale, and in offering such type for lease shall set such terms for leasing that machine as in defendant's judgment represent a commercially reasonable relationship between lease terms and sale terms for such type;

(b) shall not render machinery installation, instruction, repair or other services without separate charge therefor except that defendant may render without separate charge any such service in connection with a machine installation on trial or otherwise to such extent as defendant may determine to be reasonable, having regard to the customer's legitimate interest in the proper operation or fair trial of the machine;

(c) shall not include in any lease in the shoe machinery industry a full capacity clause of the form

or kind described in the said decree and the underlying findings;

(d) shall not include in the terms of or application of any lease in the shoe machinery industry any plan similar to the Right of Deduction Fund or the 1935 plan described in the said decree and the underlying findings.

3. Either party may upon written notice to the other party apply to this Court at any time for amendment or construction of this decree.

PLAINTIFF'S EXHIBIT 1

APPENDIX TABLE NO. 1

SHOE MACHINERY MANUFACTURERS, DEALERS IN USED SHOE MACHINERY, AND IMPORTERS *

Net Income (After Taxes), Net Worth, and Employees, 1963

Company	Net Income (After Taxes)	Net Worth	Employees
I. *Manufacturers* *			
United Shoe Machinery Corporation	$10,205,990	$178,733,944	21,285
Domestic operations only	6,960,876	113,211,208	6,375
Compo Shoe Machinery Corporation	33,109 [1]	4,541,149	394
International Shoe Machine Corp.	675,963	3,120,389	239
Herman Schwabe, Inc.	48,111	486,946	83
Boston Machine Works Company	70,773	1,117,664	103
Prime Manufacturing Company	(538,072)	(179,603)	55
Western Supplies Company	137,832	1,275,709	230
W. J. Young Machinery Co., Inc.	NA	450,000	75
Geo. Knight & Co., Inc.	NA	NA	75
Industrial Shoe Machinery Corp.	NA	NA	20 to 40
II. *Dealers (Used Shoe Machinery)* *			
Plymouth Machinery Co., Inc.	15,441	87,456	25
Sharaf Shoe Machinery Co.	3,000	35,000	6 to 8
Haverhill Shoe Machinery Company	5,053	130,644	12
Eastern Sewing Machine Co., Inc.	2,776	48,715	12
III. *Importers* *			
Independent Shoe Machinery Co., Inc.	4,908	74,180	30
Fortuna Machine Company	34,161	113,747	7
C. I. C. Machinery, Inc.	NA [2]	112,069	8
Delta Shoe Machinery Corp.	1,213	21,381	3
International Advisory Service	NA	NA	8

* Affidavits obtained from shoe machinery manufacturers, dealers in used shoe machinery, and importers reveal their revenues from the lease and sale of shoe machinery in 1963. Based upon such information, the manufacturers listed include the eight largest and the tenth and seventeenth largest revenue recipients; the dealers listed include the first, second, fifth, eighth and ninth largest companies, while the importers listed are the first, fourth, fifth and sixth largest recipients of revenues from the lease and sale of imported shoe machinery.

NA—Not available.

[1] Compo incurred an operating loss of $22,891; the figure herein is after the application of a special tax credit of $56,000.

[2] C.I.C. incurred a loss in 1963; the amount of the loss is not reported by the Company.

SOURCE: United Shoe Machinery Corporation and affidavits of the companies.

PLAINTIFF'S EXHIBIT 29

[G. E. Robinson Answ'd April 24, 1961]

LASTING-CEMENT SHOE UIM—A&B
Boston, Massachusetts
April 14, 1961.

C-Day, Copied by Government Date 1871-1874

MR. G. E. ROBINSON
TERMS COMMITTEE

UNITED INJECTION MOULDING MACHINE—
MODELS A AND B

Under date of April 14 you will have received Terms Notice Number B862 announcing commercial terms for the subject machines. The terms are identical for both the Model A and B. There will be a limited number of Model A machines in the field and these are already covered by specific orders. All future machines beyond these will be for the Model B. There are minor modifications in the Model B over the Model A but the prime reason for having two models is to expedite the adoption and manufacture. There should be no confusion regarding these two models.

The *United* Injection Moulding Machine—Model B moulds and attaches to a lasted shoe bottom a polyvinyl chloride sole and heel unit at the rate of one pair every 50 seconds. This works out to an 8-hour production of 400 pairs, after making allowances for mould changes, operator comfort, pushing shoe racks, etc. The end product is a light, clean, uniform shoe, which gives extremely good wear and has high customer appeal.

The process starts with a flat-lasted shoe. There is nothing extraordinary about the preparation except that the lasting must be uniform. In other words, some shoes cannot be lasted tight and others loose. The shoe is roughed like a normal cement shoe and is cemented with a special cement designed for use with PVC. A filler is cemented to the lasted bottom and serves a dual purpose. Its primary purpose is to seal off the edge of the lasted margin so the fluid plastic will not get between it and the insole.

Secondly, it reduces the volume of the sole compound required. Scrap insole material, upper leather or most any compatibly non-compressible material is satisfactory for this purpose. A heel plug is loose nailed to the heel seat. This again reduces the amount of plastic required and provides a more uniform cross-section to facilitate cooling. After last pulling the shoe is ready for the Injection Moulding Machine.

The machine consists of essentially three elements—moulds, plasticizer and injector and the conveyor. The moulds are very important and great care is taken in their design and manufacture. A pair of moulds is required for each size and half size; however, with properly designed lasts it is possible to make three widths on one pair of moulds. If the moulds are made for C width, B, C and D can be made on them. Where this is done the feather line is kept exactly the same for the three widths and the difference in fit is put in the wood above the feather line. This system has proven entirely satisfactory. Usually new lasts are required. To date we have not found any existing lasts where the relationship of the heel seat plane to that of the forepart is correct for good mould making. The correction usually found necessary to the feather line to give this proper relationship in no way affects the fit or appearance of the last.

The current net sale price of juvenile moulds is about $1250.00 a pair, depending upon the complexity of the tread design and treatment of the surface of the sole extension. No men's moulds have yet been made and, therefore, no price is available. It is expected, however, that men's moulds might cost moderately more because more time will be required in their manufacture.

Approximately 12 weeks are required to manufacture a run of moulds after receipt by Beverly Factory of all shoe materials and lasts required. Detailed information will be provided you as to the materials required and the procedure to be followed in ordering moulds.

The plasticizer and injector, as its name implies, converts by a combination of mechanical and electrical heat the PVC tape to a fluid state. This is then forced into the mould by the injector. When the mould is completely filled a "tell-tale" signals the injector cylinder that the

mould is full and cuts off the flow of plastic. This results in a uniformly filled mould, eliminates spew and automatically adjusts the amount of plastic injected for any size shoe presented to it. The conveyor which holds four pairs of moulds merely provides a storage system and cooling time for the plastic to set up.

To operate the machine the operator takes the lasted and cemented shoe from which the last has been pulled, slips it over a collapsible metal foot form, expands the last and then swings it over and clamps it on to the closed side and sole mould. This provides a cavity sealed off by the lasted shoe, the shape of which is the sole and heel unit to be produced. The operator then indexes the machine and the mould with the shoe in place is carried to the injection station where the injection automatically takes place. While this shoe is being moved from the loading station to the injection station a finished shoe is moved into the loading station, which is then removed by the operator, a new shoe slipped on the foot form and the process repeated.

The PVC sole compound is a special formulation developed by *United* to eliminate undue stiffening or cracking in cold weather and to give excellent wear. A year ago when the first experimental machine was placed on trial the sole compound sold for 85¢ a pound. The present compound is selling for 55¢ and a new compound will be available May 1 at 51¢ a pound. This cost reduction has been due to continuing development work and increased volume. We are confident that as this work progresses and the volume continues to increase the price will be reduced substantially below present levels. The compound is available in a variety of colors at a few cents per pound additional cost. It should be kept in mind that this particular PVC soling is approximately 20% lighter in weight than the average composition rubber sole. As a possible guide to you the juvenile shoes currently being made in the 8½ to 3 run, average slightly less than ½ pound per pair for soling compound.

Closely related to the soling compound is a special two-part cement for use on the shoe bottom. This cement is known as SUPERGRIP 750 and sells for $1.80 a quart. About 100 pairs of juvenile shoes can be processed with one quart. This cement is packaged in quarts only be-

cause it is a two-part cement and after mixing the shoes to which it has been applied must be processed through the Injection Machine within 3 hours. If the cement were packaged in larger containers it would not be possible to get all the shoes cemented from the larger container through the Injection Machine before the maximum time limit of 3 hours had expired.

As for the economics of the process, we cannot be of much specific help in this area because the rate at which the machine is run and the rate at which the mould cost is written off represent a substantial factor in the cost of the shoe. For instance, if a customer installed a machine on a lease basis, wrote the initial payment off over 5 years and averaged 12,000 pairs of shoes a month, a machine cost of 9¢ per pair would result. If on the other hand he averaged 20,000 pairs a month the machine cost would be reduced to approximately 6½¢ a pair. We can say, however, that so far some 300,000 pairs of juvenile shoes have been made which have been readily sold and accepted by the trade and are reported to have provided a substantial saving to the manufacturer over the so-called "Bond Welt" process and three-sole Stitchdown which they have replaced.

We believe we are safe in saying that to reduce the machine and mould cost to a reasonable level it will be necessary to run the Injection Moulding Machine on a multiple shift basis. This does not mean that the whole factory must run on multiple shifts but only the Injection Machine, the Bottom Cementer and Loose Nailer. This is possible because if the shoes are sufficiently dry the last may be pulled and the shoes for the second and third shift stored off-the-last.

As you will have gathered from the foregoing, the work to date has been confined to the juvenile and boys' runs. This should in no way be construed to mean that the process is limited to these runs. We are currently making trial moulds for men's sizes and experimental work is underway to adapt the process to utilize string lasted uppers such as are so popular in the low price flattie casual vulcanized field.

We are prepared to accept machine orders on a specific order basis. Because of the magnitude of the machine we

do not propose to build machines in large lots. We have in process a lot of 25 machines, 17 of which are already committed. Shipping of these 17 will not be completed until mid-December, which means that delivery of any new order could not be expected until after that time. This, however, should not prove a deterrent to your soliciting orders because past experience has indicated that at least six months will be required for a customer to select, have checked and provide lasts and materials and for us to build his initial set of moulds. Once a customer has become familiar with the steps necessary before moulds can be commenced the overall period can be reduced to about four months.

We believe the *United* Injection Moulding Machine—Model B represents an important step in what appears to be a major new bottoming process. We also believe it represents a very important source of new revenue to the Corporation. We are certain you will find very keen interest in the field regarding this machine and process. We are also certain that with a machine and process as new as this there will be many questions which cannot be anticipated. When you encounter such situations we trust you will communicate with us immediately and we will do our best to be of assistance.

R. C. MARCY
R. C. Marcy, Lasting-Cement Shoe Department

MS/AMH

TABLE 2 A

NUMBER OF USMC AND ALL OTHER SHOE MACHINES IN THE 18 MAJOR AND 12 MINOR SHOE MACHINE CATEGORIES, AS SHOWN BY FOUR STUDIES, 1947, 1949, 1963, 1964

Category	1947 OMIR Study		1949 Government Sample		1963 USMC Sample (Including Machines Manufactured by United and Others of a Type Currently Offered by United)		1963 USMC Sample Updated to 1964 * (Including Machines Manufactured by United and Others of a Type Currently Offered by United)	
A. Major	USMC	All Others	USMC	All Others	USMC	All Others	USMC	All Others
1. Clicking	16,346	539	568	10	1,018	110	947	114
2. Eyeletting	2,296	545	48	12	154	33	163	33
3. Cutting Press	3,319	316	47	12	93	18	93	13
4. Pulling Over	3,145	19	89	0	179	26	180	31
5. Lasting	12,561	796	403	17	456	112	397	122
6. Welt Sewing	1,470	40	36	0	73	0	71	0
7. Inseam Trimming	595	3	15	0	33	5	34	4
8. Outsole Laying	1,029	99	18	1	25	56	25	58
9. Rough Rounding	1,430	31	35	0	77	2	66	2
10. Outsole Stitching	3,537	309	100	4	208	26	198	29
11. Cement Sole Attaching	870	1,319	19	60	36	72	42	69
12. Littleway Lockstitch	580	58	20	2	63	2	74	2
13. McKay Chainstitch	498	65	11	2	7	0	6	0
14. Loose Nailing	1,224	23	20	0	78	13	76	13
15. Outsole Leveling	1,082	29	41	3	44	0	44	0
16. Fibre Fastening	470	0	6	0	20	0	24	0
17. Heel Attaching	3,168	230	110	6	120	38	116	44
18. Slugging	773	72	18	11	0	0	0	0
Injection Moulding [1]	------	------			3	0	4	0
Sub-total	54,393	4,493	1,604	140	2,687	513	2,560	534
B. Minor								
19. Cement Shoe	3,415	2,130	95	139	194	191	188	198
20. Cutting Die	673	87	19	4	0	0	0	0
21. Eyeletting	839	0	5	0	6	7	6	7
22. Fitting Room	13,555	9,730	587	726	867	542	874	558
23. General	19,416	7,781	993	312	1,233	725	1,213	754
24. Goodyear	7,722	1,077	191	38	319	146	291	153
25. Heeling	3,502	695	104	20	65	14	61	14
26. Lasting	3,192	438	105	13	196	47	182	53
27. Littleway	853	50	31	1	5	5	4	6
28. Metallic	3,380	986	108	91	129	226	118	223
29. Pulling Over	4,138	138	160	7	210	151	205	179
30. Rubber Shoe	709	769	1	0	15	42	15	43
Sub-total	61,394	23,881	2,399	1,351	3,239	2,096	3,157	2,188
GRAND TOTAL	115,787	28,374	4,003	1,491	5,926	2,609	5,717	2,722

* October 1, 1964

[1] This major category was not in existence in 1949.

SOURCE: Printouts for 1963 and 1964 furnished by letters from counsel for United dated December 21, 1965, and February 8, 1966, respectively; United Shoe Machinery List of "Shoe Machinery Lease Terms and Sale Prices" (effective January 2, 1964); Plaintiff's OMIR and 1949 Sample Tables as contained in the Court's opinion in original proceeding, reported at 110 F. Supp. 304-06.

TABLE 2 B

PERCENTAGE OF USMC AND ALL OTHER SHOE MACHINES IN THE 18 MAJOR AND 12 MINOR SHOE MACHINE CATEGORIES, AS SHOWN BY FOUR STUDIES, 1947, 1949, 1963, 1964

Category	1947 OMIR Study		1949 Government Sample		1963 USMC Sample (Including Machines Manufactured by United and Others of a Type Currently Offered by United)		1963 USMC Sample Updated to 1964 * (Including Machines Manufactured by United and Others of a Type Currently Offered by United)	
A. Major	USMC	All Others	USMC	All Others	USMC	All Others	USMC	All Others
1. Clicking	97%	3%	98%	2%	90%	10%	89%	11%
2. Eyeletting	81	19	80	20	82	18	83	17
3. Cutting Press	91	9	78	22	84	16	88	12
4. Pulling Over	99	1	100	0	87	13	85	15
5. Lasting	94	6	96	4	80	20	77	23
6. Welt Sewing	97	3	100	0	100	0	100	0
7. Inseam Trimming	99	1	100	0	87	13	90	10
8. Outsole Laying	91	9	95	5	31	69	30	70
9. Rough Rounding	98	2	100	0	98	2	97	3
10. Outsole Stitching	92	8	96	4	89	11	87	13
11. Cement Sole Attaching	40	60	24	76	33	67	38	62
12. Littleway Lockstitch	91	9	91	9	97	3	97	3
13. McKay Chainstitch	88	12	85	15	100	0	100	0
14. Loose Nailing	98	2	100	0	86	14	85	15
15. Outsole Leveling	97	3	93	7	100	0	100	0
16. Fibre Fastening	100	0	100	0	100	0	100	0
17. Heel Attaching	93	7	95	5	76	24	73	27
18. Slugging	91	9	62	38	—	—	—	—
Injection Moulding [1]	—	—	—	—	100	0	100	0
Sub-total	92	8	92	8	84	16	83	17
B. Minor								
19. Cement Shoe	63	37	41	59	50	50	49	51
20. Cutting Die	89	11	83	17	—	—	—	—
21. Eyeletting	100	0	100	0	46	54	46	54
22. Fitting Room	58	42	45	55	62	38	61	39
23. General	71	29	76	24	63	37	62	38
24. Goodyear	88	12	83	17	69	31	66	34
25. Heeling	83	17	84	16	82	18	81	19
26. Lasting	88	12	89	11	81	19	77	23
27. Littleway	94	6	97	3	50	50	40	60
28. Metallic	77	23	54	46	36	64	35	65
29. Pulling Over	97	3	96	4	58	42	53	47
30. Rubber Shoe	48	52	100	0	26	74	26	74
Sub-total	72	28	64	36	61	39	59	41
GRAND TOTAL	80	20	73	27	69	31	68	32

* October 1, 1964

[1] This major category was not in existence in 1949.

SOURCE: Printouts for 1963 and 1964 furnished by letters from counsel for United dated December 21, 1965, and February 8, 1966, respectively; United Shoe Machinery List of "Shoe Machinery Lease Terms and Sale Prices" (effective January 2, 1964); Plaintiff's OMIR and 1949 Sample Tables as contained in the Court's opinion in original proceeding, reported at 110 F. Supp. 304-06.

PLAINTIFF'S EXHIBIT 68

UNITED SHOE MACHINERY CORPORATION

Shoe Machinery Revenues, Domestic Operations, Annually *, 1953-1963
(Dollars in Thousands)

	From Lease of Machines	From Conyersion of Leased Machines to Sale	From Sale of New Machines	Service Revenues	Parts Revenues	Total Revenues
1953	$30,470	0	$ 429	$ 57	$4,615	$35,571
1954	31,103	0	327	52	4,149	35,631
1955	31,566	$13,795	737	481	5,424	52,003
1956	26,493	7,526	1,311	1,087	6,293	42,710
1957	25,308	3,990	793	1,312	7,047	38,450
1958	23,907	3,753	1,269	1,355	7,146	37,430
1959	24,767	3,904	768	1,535	7,857	38,831
1960	23,182	5,949	800	1,571	7,611	39,113
1961	23,051	3,546	1,242	1,815	7,915	37,569
1962	23,184	2,492	1,102	1,920	8,111	36,809
1963	22,393	1,799	1,639	1,998	7,624	35,453

* Data pertain to fiscal years ended on or about February 28 of the subsequent year.

SOURCE: United Shoe Machinery Corporation.

PLAINTIFF'S EXHIBIT 69
(REVISED, see footnote to index.)

SHOE MACHINERY MANUFACTURERS *

Revenues From the Lease and Sale of Shoe Machinery and Number of Machines Leased and Sold, United States, 1963

Company	Revenues From the Lease and Sale of Shoe Machinery			Number of Machines Leased and Sold		
	Total	Sales	Leases	Total	Sold	Leased
United Shoe Machinery Corp.	$25,831,000	$3,438,000	$22,393,000	3,913	1,646	2,267
International Shoe Machine Corp.	3,903,104	294,017	3,609,087	597	62	535
Compo Shoe Machinery Corp.	2,999,110	1,435,544	1,563,566	1,359	685	674
Herman Schwabe, Inc.	763,217	763,217	NA	266	NA	NA
Boston Machine Works Company	448,033	151,127	296,906	674	379	295
W. J. Young Machinery Co., Inc.	228,680	181,250	47,430	70	50	20
Industrial Shoe Machinery Corp.	189,000	189,000	0	293	293	0
Geo. Knight & Company, Inc.	270,000	250,000	20,000	250	250	0
Markem Machine Company	224,156	224,156	0	110	110	0
Western Supplies Company	216,675	191,655	25,020	152	134	18
Lowell Moulding Corporation	202,565	69,143	133,422	78	13	65
Ro-Search, Inc.	147,900	147,900	0	58	58	0
Louis G. Freeman Company	120,672	120,672	0	117	117	0
Lacene Manufacturing Corp.	118,603	0	118,603	341	0	341
Allied Shoe Machinery Corp.	113,446	100,232	13,214	70	54	16
Prime Manufacturing Company	110,093	57,098	52,995	104	40	64
Lamac Process Company	110,000	110,000	0	61	61	0
Acme Staple Company, Inc.	92,837	40,000	52,837	1,229	175	1,054
National Development Co.	85,986	0	85,986	205	0	205
Ackerman-Gould	75,000	75,000	0	100	100	0
Circle Machine Co., Inc.	75,000	75,000	0	60	60	0
American Research & Development Co.	67,059	57,160	9,899	35	24	11
Rotary Machine Company, Inc.	55,000	55,000	0	100	100	0
Schaefer Machine Company	50,000	50,000	0	NA	NA	0
Puritan Manufacturing Company	32,299	32,299	0	35	35	0
Maxam, Inc.	31,344	17,552	13,792	94	9	85
Ornsteen Chemicals & Textiles, Inc.	30,000	30,000	0	NA	300	NA
H. & R. Manufacturing Company	28,560	NA	NA	NA	NA	NA
Braley & Walker, Inc.	28,173	28,173	0	55	55	0

* Of the seven companies from which data could not be obtained, four, namely, Formulast Corp., Kay Machine Company, Ultra Shoe Machine Company, and Allied Marker, are believed to have had combined revenues totaling not more than $400,000. For Atlas Shoe & Sewing Machine Company, Dun & Bradstreet estimates a total company income from all of its sources of $200,000 per year, and for T. J. Edwards it estimates a total company revenue of $500,000, but notes that the company is a manufacturer of marking dies and stamps. The A. D. Locke Company's only connection with shoe machinery is believed to be stapling machines for attaching buttons and bows, etc.

NA—Not available.

Company	Revenues From the Lease and Sale of Shoe Machinery			Number of Machines Leased and Sold		
	Total	Sales	Leases	Total	Sold	Leased
Brockton Performating Co.	$25,000	$25,000	0	300	300	0
Edwin B. Stimpson Co., Inc.	25,000	NA	NA	NA	NA	NA
Standard Rivet Co.	23,800	4,125	$19,675	531	10	521
Terrell Shoe Products, Inc.	21,672	21,672	0	50	50	0
Auto-Soler Co.	21,495	21,495	0	19	19	0
Potdevin Machine Company	20,500	20,500	0	35	35	0
Boston Electric Heating Corp.	20,000 [2]	20,000 [2]	0	NA	NA	NA
Campbell Bosworth Machine Co.	19,121	12,864	6,257	89	22	67
J. L. Thomson Rivet Corporation	16,008	10,767	5,241	15	8	7
Tubular Rivet & Stud Co.	12,463	0	12,463	111	0	111
The Peerless Machinery Co.	8,800	8,800	0	5	5	0
Duo-Fast Northeast, Inc.	1,386	1,386	0	22	22	0
Excel Taping Machine Co.	5,500	4,025	1,475	164	7	157
O'Donnell Rubber Products Co.	5,376	1,070	4,306	NA	NA	NA
Gould & Scammon, Inc.	3,500	3,500	0	1	1	0
Randall Leather Machine Corp.	3,250	3,250	0	3	3	0
Stewart Bros., Inc. of Lynn	3,210	3,210	0	4	4	0
Martin P. Foy & Son, Inc.	2,466	1,981	485	15	10	5
Reece Folding Machine Co.	2,400 [3]	2,400 [3]	0	1 [3]	1 [3]	0
Henry S. Blackwood, Inc.	1,895	1,635	260	9	7	2
Fales L. F. Machine Company	1,835	1,835	0	1	1	0
Kensol-Olsen Mark Corp.	1,300	1,300	0	1	1	0
Bowcraft Trimming Co.	822	822	0	11	11	0
Watlow Electric Manufacturing Company	2,301	2,301	0	40	40	0
American Shoe Specialties Co., Inc.	1,000	1,000	0	25	25	0
American Machine & Foundry Company	84,000	0	84,000	140	0	140
Diamond Machine Company [5]	72,682	72,682	0	54	54	0
D & B Die Works	3,600	3,600	0	50	50	0
Bostitch, Inc.	2,713	2,713	0	103	103	0
Binks Manufacturing Co.[6]	200	200	0	NA	NA	NA

[1] Includes a small amount of lease revenues.

[2] Includes revenues obtained from non-shoe industries.

[3] Estimated by the Government based on the company's reported total revenues of $7,200 from the sale of four shoe machines for the period 1961-1963.

[4] Data pertain to the number of shoe machines converted to sale from lease (1,385) and the number of shoe machines sold (new machines) (261).

[5] Includes Lewiston Machine Co.

[6] Company states that its total lease and sale revenues did not exceed $200.00.

SOURCES: Affidavits of the companies.

PLAINTIFF'S EXHIBIT 70
(REVISED, see footnote to index.)

SHOE MACHINERY MANUFACTURERS *

REVENUE DERIVED FROM THE LEASE AND SALE OF SHOE MACHINERY IN THE UNITED STATES, 1963 **

Company	Revenue from Lease and Sale of Shoe Machinery	
	Dollars	Percent
United Shoe Machinery Corporation	$25,831,000	71.8%
Compo Shoe Machinery Corporation	2,999,110	8.3
International Shoe Machine Corp.	3,903,104	10.8
Western Supplies Company	216,675	0.6
Herman Schwabe, Inc.	763,217	2.1
Prime Manufacturing Company	110,093	0.3
Boston Machine Works Company	448,033	1.2
Louis G. Freeman Company	120,672	0.3
W. J. Young Machinery Co., Inc.	228,680	0.6
Geo. Knight & Co., Inc.	270,000	0.8
Industrial Shoe Machinery Corp.	189,000	0.5
Markem Machine Company	224,156	0.6
Lowell Moulding Corporation	202,565	0.6
Allied Shoe Machinery Corp.	113,446	0.3
Lamac Process Company	110,000	0.3
Ro-Search, Inc.	147,900	0.4
Lacene Manufacturing Corp.	118,603	0.3
TOTAL	$35,996,254	100.0%***

* Manufacturers of new machinery receiving more than $100,000 from the lease and sale of shoe machinery in 1963.

** Data pertain to revenues generated from the lease and sale of shoe machines for use in shoe factories.

*** Components do not add to 100% because of rounding; they add to 99.8%.

SOURCE: Affidavits of manufacturers.

PLAINTIFF'S EXHIBIT 71
(REVISED, see footnote to index.)

SHOE MACHINERY IMPORTERS

Revenues Derived From the Lease and Sale of Shoe Machinery and the Number of Shoe Machines Leased and Sold in the United States by Companies Whose Principal Shoe Machinery Activity is Importing Shoe Machinery, 1963

Company	Shoe Machinery Revenues			Number of Shoe Machines		
	Total	Leases	Sales	Total	Leased	Sold
Independent Shoe Machinery Co., Inc.	$526,610	0	$526,610	49	0	49
Fortuna Machine Company	13,335	0	13,335 [1]	125	0	125
Ludlow Enterprises	200,806	$ 800	200,006	733	8	725
Automatic Work Products	121,568	0	121,568	10	0	10
Continental Shoe Products	104,514	19,135	85,379	27	8	19
International Advisory Service	47,317	0	47,317	11	0	11
Sagem Shoe Machinery Corp.	16,531	0	16,531	3	0	3
C. I. C. Machinery, Inc.	27,476	16,476	11,000	32	26	6
Delta Shoe Machinery Corp.	18,691	0	18,691	45	0	45
Pilgrim Shoe & Sewing Machine	3,500	NA	NA	NA	NA	NA
R. E. King Co., Inc.	590	0	590	3	0	3
Archie Solomon & Associates	1,000 [2]	NA	NA	NA	NA	NA

NA—Not available.

[1] Company states that practically all of their revenues are derived from the sale of shoe machinery.

[2] Company states that total revenue would not exceed $1,000.

SOURCES: Affidavits of the companies.

PLAINTIFF'S EXHIBIT 72

APPENDIX TABLE 7—USED SHOE MACHINERY DEALERS

Total Company Revenues, Total Assets, Net Worth, Net Profit After Taxes, and Employees; Revenues From the Lease and Sale of Shoe Machinery and Number of Shoe Machines Leased and Sold, United States, 1963

Company	Total Company Revenues	Total Assets	Net Worth	Net Profit After Taxes	Employees	Revenues From the Lease and Sale of Shoe Machines [1]			Number of Shoe Machines Leased and Sold [1]		
						Leases	Sales	Total	Leased	Sold	Total
Plymouth Machinery Co., Inc.	$1,146,000	$1,225,869	$ 87,456	$15,441	25	$250,000	$950,000	$1,200,000	400	1,600	2,000
Louis Goodman Machinery Corp.	NA	NA	NA	NA	NA	2,500	364,189	366,689	10	1,250	1,260
Lewiston Shoe Machinery Co.	NA	NA	NA	NA	NA	1,187	275,875	277,062	14	533	547
Sharaf Shoe Machinery Co.	340,000	119,000	35,000	3,000	6-8	1,500	250,000	251,500	NA	NA	NA
Haverhill Shoe Machinery Company	450,696	190,751	130,644	5,053	12	0	176,173	176,173	0	341 [4]	341 [4]
Eastern Sewing Machine Co., Inc.	509,319	242,273	48,715	2,775	12	7,240	152,882	160,122	15	304	319
J. Itzkowitz Sewing Machine Co.	NA	NA	NA	NA	NA	2,155	126,460	128,615	9	148	157
Hyman Koppel	NA	NA	NA	NA	NA	0	101,525	101,525	0	287	287
Lowell Shoe Machinery & Supply Co.	NA	NA	NA	NA	NA	1,426	77,154	78,580	25	263	288
Federal Sewing Machine Co.	NA	NA	NA	NA	NA	0	75,000	75,000	0	300	300
Sloan Shoe Machinery Co.	NA	NA	NA	NA	NA	500	70,091	70,591	NA	NA	NA
Cohen Shoe Machinery Co.	NA	NA	NA	NA	NA	NA	NA	61,667	6	289	295
C. F. Bogle Machinery & Supply	NA	NA	NA	NA	NA	0	50,000	50,000	0	40	40
Acme Sewing & Shoe Machinery Co.	NA	NA	NA	NA	NA	552	40,478	41,030	2	118	120
Lawrence Sewing Machine Co.	NA	NA	NA	NA	NA	0	38,611	38,611	0	175	175
American Sewing Machine Co.	NA	NA	NA	NA	NA	0	16,483	16,483	0	94	94
Garr Industrial Machine & Supply Corp.	NA	NA	NA	NA	NA	150	12,500	12,650	1	9	10
Hoffman Bros.[2]	NA	NA	NA	NA	NA	0 [3]	5,500 [3]	5,500 [3]	NA	NA	NA
E. H. Hall Co., Inc.	NA	NA	NA	NA	NA	0	5,355	5,355	0	15	15
S. Goltz & Co.	NA	NA	NA	NA	NA	0	4,000	4,000	0	10	10
Los Angeles Shoe Machinery Corp.	371,569	NA	NA	NA	NA	0	121,569	121,569	NA	NA	NA
Rapid Shoe Machinery Sales Corp.	166,004	NA	NA	NA	NA	0	166,004	166,004	0	NA	NA

NA—Not available.

[1] Data pertain to shoe machines in shoe factories.

[2] Company reported, in addition, sales of $29,885 of skiving machines as representative of Fortuna Machine Co.

[3] "For 1963 our company's revenues from the sale of used shoe machinery in the United States was not more than $5,500.00." Company affidavit, July 12, 1965.

[4] Data pertain to United Shoe Machinery Corporation shoe machines sold; data pertaining to the sale of non-United shoe machines are not available.

SOURCES: Affidavits of the companies.

PLAINTIFF'S EXHIBIT 73
(REVISED, see footnote to index.)

REVENUE DERIVED FROM LEASE AND SALE OF SHOE MACHINERY, 1963

	Revenue	Percent of Total
By United (Domestic only)	$25,831,000	62.2%
By all other manufacturers	11,229,807	27.0
By all used machinery dealers	3,408,726	8.2
By all companies classified as importers	1,081,938	2.6
Total	$41,551,471	100.0%

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 7198

UNITED STATES OF AMERICA, PLAINTIFF

-against-

UNITED SHOE MACHINERY CORPORATION, DEFENDANT

STIPULATION NO. 1

* * * *

10. That no independent repair service organization (i.e. an organization independent of defendant or shoe machinery companies or shoe manufacturing companies) has developed in the United States since 1955;

* * * *

/s/ Margaret H. Brass
MARGARET H. BRASS

/s/ W. Randolph Elliott
W. RANDOLPH ELLIOTT
Attorneys, Department of Justice

/s/ Robert Proctor
ROBERT PROCTOR

/s/ Ralph M. Carson
RALPH M. CARSON
Attorneys for Defendant

Boston, September 17 1965

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 7198

UNITED STATES OF AMERICA, PLAINTIFF

-against-

UNITED SHOE MACHINERY CORPORATION, DEFENDANT

STIPULATION NO. 3

* * * *

1. In 1964 and 1965 the plaintiff contacted all companies which either the plaintiff or defendant thought could possibly be either manufacturers, importers or distributors of new shoe machinery or rebuilders or dealers in used shoe machinery in the United States, to obtain information concerning their operations. One hundred and three companies provided, in affidavit form, varying amounts of information regarding their shoe machinery operations between 1947 and 1964.

* * * *

5. The plaintiff represents that it has been unable to obtain extensive information on the operations of second-hand dealers for the year 1955, but that data were obtained for both 1955 and 1963 for three companies, namely, Lewiston Shoe Machinery Company, Inc. (Lewiston), Haverhill Shoe Machinery Company, Inc. (Haverhill) and Cohen Shoe Machinery Company, Inc. (Cohen). In 1963 these companies were third, fifth and twelfth largest, respectively, in the lease and sale of shoe machinery as determined from revenue statistics obtained from the 22 used shoe machinery dealers found to exist in 1963. Total company revenues for these three companies for 1955 and 1963 were as follows:

Company	1955	1963
Haverhill	$218,000	$451,000
Lewiston	75,000	277,000
Cohen	66,000	100,000

The total company revenues of Lewiston and Cohen were derived in both years almost exclusively from the sale of used shoe machinery and parts. The machinery revenues for 1963 of Haverhill ($338,000) were divided almost equally between shoe machinery ($176,000) and dry-thread sewing machinery ($162,000). An estimate furnished by Haverhill in its affidavit states that in 1955 approximately 34 percent of its machine revenues of $163,000 was from shoe machinery sales.

* * * *

/s/ Margaret H. Brass
MARGARET H. BRASS

/s/ W. Randolph Elliott
W. RANDOLPH ELLIOTT
Attorneys, Department of Justice

/s/ Robert Proctor
ROBERT PROCTOR

/s/ Ralph M. Carson
RALPH M. CARSON
Attorneys for Defendant

Dated: May 25, 1966

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 7198

UNITED STATES OF AMERICA, PLAINTIFF

-against-

UNITED SHOE MACHINERY CORPORATION, DEFENDANT

STIPULATION NO. 4

* * * *

12. That the non-United machines listed in the attachment to the affidavit of Milton Heimlich of Plymouth Shoe Machinery Company sworn to September 17, 1964, and stipulated by the parties in Stipulation No. 1 as the direct testimony of the affiant, includes dry-thread sewing machines. According to Mr. Heimlich's best estimate these dry-thread sewing machines account for 70 to 75 percent of the total non-United machines listed in said attachment.

* * * *

/s/ Margaret H. Brass
MARGARET H. BRASS

/s/ W. Randolph Elliott
W. RANDOLPH ELLIOTT

/s/ Robert J. Ludwig
ROBERT J. LUDWIG
Attorneys, Department of Justice

/s/ Robert Proctor
ROBERT PROCTOR

/s/ Ralph M. Carson
RALPH M. CARSON
Attorneys for Defendant

Dated: September 15, 1966

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 7198

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED SHOE MACHINERY CORPORATION, DEFENDANT

STIPULATION NO. 6

IT IS STIPULATED between the parties above named, for the purpose of this case only and subject to all proper objections (including relevance and materiality) and subject also to the right of the party concerned to question the significance or legal effect of the matters stipulated.

1. If the items described below which Messrs. Hardy, Carey and Sessler of Compo Shoe Machinery Corporation would testify are in their opinion devices and not shoe machines were excluded from Defendant's Exhibit 64 the results would be as follows:

USM	COMPETITIVE	TOTAL
6,176 (57.1%)	4,641 (42.9%)	10,817

2. The items which would be removed and their numbers would be as follows:

	USM	Others
Staplers		150
Thermaguns	15	61
Steamers	15	301
Treeing Machines		143
Presses		50
Stitch Markers		189
Category 20 Cutting Machines		19
Category 21 Fitting Room Machines (Presses, Hooksetting, Eyeletting)	13	53
Miscellaneous		27
Total	43	993

3. The defendant does not, however, concede that the items listed in Paragraph 2 of this Stipulation are devices and not shoe machines.

4. A number of the items which are listed in Paragraph 2 of this Stipulation were included in the original proceedings in this case in Plaintiff's Tables Accompanying Requests For Simple Findings of Fact B-11 and B-14 as non-United Shoe machines. If only those items in Paragraph 2 of this Stipulation which were not previously included in tables accompanying Requests for Simple Findings of Fact B-11 and B-14 were excluded from D-64 the result would be to exclude 28 United machines and 492 non-United Machines. If only these exclusions were made from Defendant's Exhibit 64 the results would be as follows:

USM	COMPETITIVE	TOTAL
6,191 (54.6%)	5,142 (45.4%)	11,333

/s/ Margaret H. Brass
MARGARET H. BRASS

/s/ W. Randolph Elliott
W. RANDOLPH ELLIOTT

/s/ Robert J. Ludwig
ROBERT J. LUDWIG
Attorneys, Department of Justice

/s/ Robert Proctor
ROBERT PROCTOR

/s/ Ralph M. Carson
RALPH M. CARSON
Attorneys for Defendant

Date: November 3, 1966

DEFENDANT'S EXHIBIT 86

BERTRAND FOX
Curriculum Vitae

Edsel Bryant Ford Professor of Business Administration and Director of Research, Harvard Business School.

Degrees: AB Northwestern Univ., 1929
AM Harvard Univ., 1933
Ph D Harvard Univ., 1934 in Economics and Statistics

Statistician, Harvard Economic Society, 1929-1932

Instructor in Economics, Harvard Univ., 1932-1935

Ass't. Professor to Professor of Economics, Williams College, 1935-1949

Director, Military Division, 1941-1944; Deputy Director, Program Bureau, 1942-1944; Director, Program and Statistics Bureau, 1944-1945—War Production Board.

Professor of Business Administration, Harvard Business School, 1949- ; Co-Director, Mobilization Analysis Center, 1951-1953; Director of Research, 1953- ; Edsel Bryant Ford Professor, 1954-

Administrator, Merrill Foundation for the Advancement of Financial Knowledge, 1947-1963.

Research Director, National Commission on Money and Credit, 1958-1961.

[fol. 1430]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C. A. No. 7198

WYZANSKI, Ch. J.

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED SHOE MACHINERY CORPORATION, DEFENDANT

APPEARANCES:

Margaret H. Brass, Esq., and Robert J. Ludwig, Esq., and W. Randall Elliott, Esq., Attorneys for the Government.

Robert Proctor, Esq., Ralph M. Carson, Esq., Taggart Whipple, Esq., Louis L. Stanton, Esq., and Charles Gerlinger, Esq., Attorneys for the Defendant.

John Hally, Esq., Attorney for amicus curiae New England Shoe and Leather Association.

Court Room No. 6
Federal Building,
Boston, Massachusetts,
October 27, 1966

* * * *

[fol. 1432] BERTRAND FOX, Sworn

DIRECT EXAMINATION

Q (By Mr. Whipple) Will you state your name and address for the record?

A My name is Bertrand Fox. My address is 18 Edgewood Road, Lexington, Massachusetts.

Q I show you a sheet with your name on it entitled, "Curriculum Vitae" and ask you whether this accurately states your Curriculum Vitae?

A Yes, sir.

MR. WHIPPLE: I offer it in evidence just to save time, your Honor.

MISS BRASS: No objection.

THE COURT: Admitted.

(Curriculum Vitae of Bertrand Fox marked Exhibit D-86)

Q Since May, 1963, have you been retained by counsel for United Shoe as an economic advisor to assist in the preparation of economic and statistical material for C-day?

A Yes, sir.

* * * *

[fol. 1433] A In the preparation of data for the C-day review, we developed a series of studies or this series of studies was initiated first to ascertain the nature and the extent of the alternatives available to producers of shoes in the selection of shoe machinery; second, to identify the changes in such alternatives during the decade since the decree; and third, to provide an estimation of the [fol. 1434] patterns of alternatives revealed and the changes therein.

MISS BRASS: Your Honor, I have no objection to the witness referring to notes to check any matter he wants to check, but I do not think he should read a statement into the record. He appears to be reading.

THE COURT: I will allow him to read a statement. His testimony is of a nature in which it is very important for him to be precise.

Dr. Fox, did you yourself prepare the notes that you have in front of you?

THE WITNESS: I did, sir.

These purposes, of course, are consistent, as I saw it, with Paragraph 7 of the Court's pretrial order and also grew out of my own belief that the single most significant requirement for effective or workable competition is the existence of realistic alternatives for buyers of a product so that they, by switching among sellers, can exercise pressure on each seller toward efficiency, price reductions, profits, improvements in products, improvements in processes. So that we focused initially all of these studies

on the existence of alternatives available to the shoe manufacturer.

Q Will you describe your role in connection with the [fol. 1435] preparation of Defendant's 54 which are the so-called flow charts that Mr. Unger had prepared?

A Based on general reading about the nature of the industry and based on discussions with United Shoe personnel, we became convinced of the heterogeneous character of the shoe machines. Many of them represented alternatives to other machines, let's say, in functions. Others preceded certain machines in the shoe making function and in essence were not alternatives but were complementary and we wanted to get—I wanted to get a picture so that I could see in visual form the nature of the functions performed in the process of shoe making and the alternatives that existed for shoe manufacturers in, let's say, the selection of shoe machinery, and we requested that these set of charts be designed in such a way as to illustrate the flow of operations in shoe making, the relationships among the various operations which were set forth in the flow, and the extent to which various alternatives or that various operations or groups of operations represented alternatives among themselves.

Our objective was to set forth as clearly as possible the nature of the choices available to shoe manufacturers [fol. 1436] in the selection of shoe machinery, both within a particular group of machines and among classes of shoe machines. And the general instructions we gave for the preparation of the charts were to be consistent with this kind of pattern.

A second point involved—and this developed only as the charts were being born and were beginning to take form—was our insistence that each machine operation or each box on the chart represent only a single function so that the machines offered for the function would be alternatives or alternative means of performing the function and in this sense substitutable for each other. And we wanted this degree of substitutability within each machine operation to be high.

Q With respect to Defendant's Exhibit 55 and 55A, Schedule B-1, will you describe your role in connection

with the preparation of that exhibit with its supplement 55A?

A The purpose of Schedule B-1 was to try to obtain a list of the alternatives available to shoe manufacturers in the sense of the list of suppliers offering machines and hence the available alternatives for the shoe manufac-
[fol. 1437] turer.

We were aware of extensive lists within United Shoe, lists of various machines and types of machines obtained from the factory management conferences, the exhibitors there, the list of machines offered, various manufacturers' brochures, advertisements, general knowledge of United personnel, etc.

And we wanted to be absolutely sure that all of those involved in these lists were currently offering machines and that these were bona fide offers and that the machines or machines of that type were currently available to shoe manufacturers as of the end of 1964.

So that on the basis of these preliminary lists, these were sent out to the branches, essentially for screening, and the idea was for them to eliminate from these initial lists any name which was not actually offering machines in their district; and for evidence of availability, we insisted that they have evidence of at least one installation of a new machine in their district. And during this process many of the names of suppliers which had been on the original lists were eliminated and we got this refined list which we believe represented or represents the avail-
[fol. 1438] able machines as of the end of 1964.

THE COURT: Just to take one example, do you mean to say that every time the phrase "second-hand dealers" appears, you knew that as of the date in 1964 the second-hand dealers had a machine of that type available or did you merely know that a machine of that type had been acquired from a second-hand dealer and was installed in some factory?

THE WITNESS: My earlier comments related only to offerings of new machines.

As to second-hand, the branch officers were to identify whether there had been an installation of a second-hand machine of United origin within the past three or four years.

THE COURT: So you wouldn't know whether it was available currently or not available currently in the second-hand market?

THE WITNESS: No, sir.

THE COURT: Now, what about an example such as Compo? Do you mean to say that you were sure that as of the date in question Compo was currently offering the machine?

THE WITNESS: These were the instructions to the [fol. 1439] branch managers, sir. I was not involved in the implementation of this, but the intent of the instructions, and the intent was to develop such a list so that the machines listed, for example, under Compo are supposed to represent the machines currently available from Compo which they are currently offering or were currently offering as of the end of 1964. This is the intent of it.

[fol. 1440] The COURT. And that you say was a standard which was applied in connection with each of these suppliers in Defendant's Exhibit 55 with respect to each type of machine?

The WITNESS. These were the instructions, sir. This was the intent.

The COURT. And those were instructions which were prepared under your supervision and with your cooperation?

The WITNESS. The detailed instructions to the field were not prepared by me, but I knew what they were, and I knew what they were attempting to achieve. I saw some of the correspondence back and forth, the attempts to check and refine, and it seemed to me it had been done well.

The COURT. Am I to understand that you checked the answers to see whether they corresponded to the type of instructions which you have spoken of?

The WITNESS. I did not check the answers.

I looked at some of the returns and saw the kinds of questions and the nature of the evidence which they were sending in.

The COURT. And it was your impression that the [fol. 1441] answers reflected the respondent's view that the machine in question was currently available?

The WITNESS. Currently available, yes, sir. Now in the discussion of yesterday, I think the term was used "significant competition," or, "a significant competitor," and the only thing that we were trying to establish there is not significant in the sense of substantial but significant that there was a bona fide offering available at that time and represented the current offerings being made of machines of the various kinds.

Actually, nothing would have pleased us more than to be able to get, let us say, current information as to the number of installations or the number of machines in place. But let me indicate that because of the very large number of both machine operations and, second, as will be seen later, the shipments in some of these operations are so small per year that we would have had to have an enormous sample of factories, or almost a complete census, to be able to get reliable figures in this kind of detail, so that both in terms of the time involved or the expense involved or the ability to get cooperation, going after this kind of thing just was not feasible, so that [fol. 1442] these figures do not represent in any sense any quantitative significance but they do in our judgment represent a list of the current offerings and a list of the machines available for each of the machine operations for which the data are set forth in Schedule B-1.

* * * *

[fol. 1443] Q With respect to Schedule B-3 in Defendant's 55, will you describe what you did in connection with the preparation of that exhibit?

A This is a set of measures called Market Attractiveness or Relative Economic Attractiveness, and our objective there was to develop a set of measures of relative, and I emphasize the term, relative economic attractiveness of the various machine operations.

What we wanted was a set of measures which would have enabled us to explain the varying number of suppliers per machine operation. We were trying to get at a means of classifying machine operations to be able to explain the kind of differences we saw in the numbers of suppliers per machine operation.

We believe that the explanation came largely in terms of the economic attractiveness of the operation, and we tried to develop some discriminatory measures there to enable us to make these broad classes. Our approach to this problem was entirely experimental and empirical.

* * * *

[fol. 1448] * * * Our objective was to get a measure, a set of ratings which would enable us to classify machines as to attractiveness to people coming into the production of machines for that function, and empirically it worked out that this gave us a very efficient system.

* * * *

[fol. 1451] Q With respect to Defendant's 56, the schedule showing dates of Entry, would you describe, if you will, the preparation of that exhibit?

A Because, both of our interest in focusing on changes since the Decree and also looking at the effects of the Decree we were extremely insistent on getting data as to the timing of new offerings and the timing of new entries into the industry, and so our instructions were for each of the offerings listed in Schedule B-1, we wanted them to get the earliest date of each offering of a supplier and, as far as an importer, the first offering in the American market by a supplier, which could be clearly substantiated in terms of records, let us say, available to United, and we also asked for a distinction among types of suppliers to be recorded in Schedule C because we wanted to distinguish between domestic suppliers, domestic producers and offerors of foreign machines, and we also wanted to distinguish among various kinds of offerors of foreign machines. Some were being offered by [fol. 1452] domestic shoe machine manufacturers, in addition to their own domestic production, and some were being offered, two by a domestic shoe manufacturer, and some were being offered by the foreign manufacturer himself, and some by another type of importer, and we wanted to distinguish among these various kinds.

Our instructions were to get this information for recording in Schedule C. This was essentially my role.

* * * *

[fol. 1453] Q Now, have you reached certain conclusions as a result of your economic analysis of these three exhibits?

A I have, sir.

Q And in reaching those conclusions, did you take into account certain characteristics of the shoe manufacturing industry and shoe machinery industry as set forth in the Court's opinion in this case in 1953 and as testified to by Mr. Unger?

A Yes, sir. I have taken that type of information into account.

Q And before you get into your detailed analysis, will you state the conclusions you have reached?

A Yes, sir.

The first one is that the realistic alternatives available to shoe manufacturers in choosing shoe machines, in our opinion, needs to be examined initially machine operation by machine operation.

Second, the character of the shoe and shoe machinery [fol. 1454] industries and the magnitude of the demands for machines for a given operation are such that a large number of competitors per machine operation is not economically feasible.

The third, since the decree, the number of competing offerings of non-United equipment has expanded to such an extent as to bring about a marked reduction in United's percentage share of total offerings.

* * * * *

[fol. 1457] The first one again is the realistic alternatives available to shoe manufacturers in choosing shoe machines, each to be examined initially machine operation by machine operation.

The second one, the character of the shoe and shoe machinery industries and the magnitude of demands for the machines for a given operation are such that a large number of competitors per machine operation is not economically feasible.

The third one, since the decree, the number of competing offerings of non-United equipment has expanded to such an extent as to bring about a marked reduction in United's percentage of total offerings.

The fourth, the response to the removal of artificial barriers to entry, entry in the form of new offerings for particular machine operations and in the form of new companies, domestic and foreign, entering the industry and in the form of older companies expanding the range of their offerings has been prompt, vigorous and at a steadily increasing rate.

[fol. 1458] The fifth one, the new offerings of non-United machines have been predominantly for the operations whose relative economic attractiveness have been high.

United's competitors have tended to avoid the relatively unattractive operations in which United was already offering new machines and second-hand machines were available.

The next one, even though the bulk of United's large number of competitors offer machines for only one or two operations, nevertheless the nature of the industry and the continued existence of such companies attest to the viability of such competitors.

Number seven, the differences in the patterns of number of competitors per machine offering are explained largely by the relative economic attractiveness of these various operations.

* * * * *

[fol. 1459] The next conclusion, the eighth, is the existence of alternative processes, sub-processes and operations of shoe making to any given operation reduces markedly the market power inherent in sole occupancy or occupancy by only a few suppliers of new machines for a particular operation.

And the ninth conclusion—the development of a widespread second-hand market for United's machines has enlarged the number of alternative sources of machines open to shoe manufacturers, especially for those operations in which the number of suppliers of new machines is very small.

And in summary, a significant effect of the decree in altering the competitive situation in the shoe machinery industry and in enlarging substantially the alternative

[fol. 1460] sources of machines open to shoe manufacturers is thus clearly evident.

Q Now, in reaching these conclusions which you have just read, have you analyzed exhibits 54, 55, 55A, 56 and 56A in relation to certain topics?

A I have.

Q And will you state those topics before you go into a detailed analysis under each topic?

A The first one is entitled, "Machinery Alternatives Available to Shoe Manufacturers."

The second is the "Patterns of New Entries into Shoe Machinery Operations."

The third is "Entries of New Companies Since the Decree."

The fourth is "Second-hand Machines Since the Decree."

The fifth is "Occupancy Patterns in Relation to Relative Economic Attractiveness."

The sixth is "Wider and More Limited Choices Among Machines."

And the seventh is the "Scope of Operations of Other Suppliers."

* * * * *

[fol. 1463] THE WITNESS: The data, schedule B, first identified that there are 126 suppliers listed in Schedule B; that is, both domestic and foreign, actively offering machines in the American shoe market.

We are also aware from published sources that there were somewhat more than a thousand factories in the industry at about that time, and we also have from Schedule A, the charts in Schedule A identified 187 operations of shoe manufacture being performed by machines. And even though the machines therein are not—or, as we look from operation to operation, some operations represent alternatives to another operation but we believe that we have to start looking at each machine operation separately to get the extent of the alternative sources for each one.

Now, in Schedule B-3, the relative ratings, the first [fol. 1464] related to the total number of machines required, sometimes called the field.

I want to indicate that if we take and divide or classify the operations into those three groups of a thousand machines and larger, this takes up 52 operations; between 150 and less than a thousand machines in place, 78 operations; and less than 150 machines in place, 52 operations.

[fol. 1464-A] Remembering that there are somewhat more than a thousand factories, it is clear that for most kinds of machines, more than 70 per cent of the kinds listed, there are more factories than the total number of machines required in terms of our estimates.

Thus some factories have no machines of a given kind, and most have, or for most machines, there are only one or two machines of a type in a factory. Thus, for most machines the breadth of the market in terms of the number of shoe factories which might acquire a machine, and in terms of the total number of machines required, is quite modest.

Our second measure that we used for rating purposes was this question of Annual Level of Shipments. These are annual level of shipments of machines from all sources. Again, our three classes were 50 and more machines, between 6 and 50, and less than 6. Only 40 operations are identified with annual shipments of more than 50 machines, 50 and more machines per year—80 of them, almost 50 per cent, between 6 and 50 machines per year, and 62 of the operations have less than 6 machines shipped per year. Thus for almost 80 per cent of the various [fol. 1465] kinds of machines Annual Shipments From All Sources is estimated at less than 50 and for about a third less than 6 new machines per year.

These figures to my mind are of critical importance in appraising the extent of competition in the sense of the number of sources of supply for the individual machine operations.

An operation requiring less than 50 machines per year could not possibly support a large number of suppliers. A few is the most that one could expect.

The same point could be made on the basis of the previous measure, the total number of machines required. Both measures indicate that most machine operations can

at best support only a very few producers of new machines, and thus the number of competitors per machine operation will be very small, even with the most vigorous competition and with no artificial obstacles to entry or expansion.

I would like to illustrate this, first, with a set of Tables.

* * * *

[fol. 1468] Q These Tables were prepared under your supervision and direction, were they?

A Completely, yes, sir. In the Charts of Schedule A there are 187 machine operations identified. And in these tabulations—I should mention this initially that five operations are omitted from all studies. One of these is in Stage 7, the operation designated 11 of Brush optional. That is omitted because the machine complement is absolutely identical with another machine operation, and we wanted to avoid double counting.

Then there are four operations which are not a single function but two or more minor functions have been put into a single operation, and these four have been omitted from all of my tabulations. Of the remaining 182 there are 9 where there was no new machine activity, that is, no offerings of new machines at the present time that we [fol. 1469] could identify, and there are 5 operations where there was neither new or second-hand machine activity identified.

In the Tables, where we will be talking about new machine operations, I will omit the 9 from each case, and where we are talking about second-hand I will omit the 5, so I will be dealing with 173 operations, or 177. The list of these omitted operations is set forth in the third page of the preface to the Tables.

As to the first of these Tables, this is essentially a frequency distribution of the 182 machine operations by the number of suppliers of new machines, only new machines, for the operation. There are really three distributions, one of domestic and/or foreign machines, and the second domestic machines only, and the third foreign machines only. The operation with the largest number of suppliers—there is one with 14, which is the largest,

and there are only four that have as many as ten suppliers. There are only 50 operations which have as many as 4 suppliers. That is a little over 25 per cent. There are 53 operations which have only a single supplier and, as I indicated, there are 9 which have no current supplier of any kind.

[fol. 1470] The same type of pattern one sees if you look at domestic manufactured machines only, where only 32 operations have as many as 4 suppliers of domestic machines, and only 55 have 3 or more domestic producers of new shoe machines, and again a larger number with only a single domestic supplier.

My conclusion is that this record confirms the expectations that have been based on the Annual Shipments data and the figures on the number of machines required as to the small numbers of suppliers per machine operation, and my conclusion is that the nature of the industry precludes any other situation where the number of shipments, the annual volume of shipments and size of demand is so slow.

The COURT. Don't you have to know anything about the profitability in order to reach that conclusion?

The WITNESS. In my judgment the number of shipments or the number of machines is so small in some cases that you could not possibly support a large number of suppliers, regardless of the profitability per machine.

The COURT. I don't know how many manufacturers of cyclatrons there are. I doubt if one cyclatron a month [fol. 1471] is sold. I doubt if one cyclatron every six months is sold.

The WITNESS. I doubt if there are very many producers.

The COURT. I beg your pardon?

The WITNESS. I doubt if there are very many producers.

The COURT. I don't know.

The WITNESS. All right.

A (Continuing.) Turning to the second Table, this is simply a distribution of the machine operations by the combined characteristic ratings. This is the sum of the three which I mentioned earlier. You will note that there

is a substantial number of operations in each of the so-called rating classes, and that they are approximately evenly distributed around a kind of neutral rating in the middle, No. 6. Actually, there are 72 in what we call "relatively attractive." That is 3, 4 and 5. And there are 79 in the "relatively unattractive." They are 7, 8 and 9.

This is what I indicated earlier is essentially a reasonably efficient set of ratings to give us the discrimination that we were after. This is simply to indicate the distribution of those ratings.

[fol. 1472] Now turning to the next section where I want to talk about the patterns of new entries, here I turn to Table 3. Incidentally, it was our intention here to try to show the response to the removal of artificial obstacles to entry, and in Table 3 we kind of asked the question, "What has been the pattern of entries and expansion in the industry since the Decree?" And we show a distribution there of the machine offerings by date of entry and by type of supplier in Table 3.

* * * *

[fol. 1487] A May I continue with Table 3?

It is probably already clear that this is an attempt to get the distributions of the total offerings which were being made as of the end or at about the end of 1964 by dates of entry and by the various types of suppliers offering machines.

In B-1 there is identified 505 different kinds of offerings. This is the figure in the lower right-hand corner. [fol. 1488] These are classified as the total offerings of United machines, non-United domestic machines, as the offerings of foreign machines by manufacturers of domestic shoe machines and offerings of foreign machines by other importers. And each of these totals is distributed to try to indicate the date of entry or the first offering of machines of those types by those suppliers.

As to manufacturers of domestic machines other than United, I have concluded that the number of new entries in the post decree years was slightly larger than the number of offerings—and I think I should amend that to say

the number of offerings of these same machines before 1950 which was 112.

And second, that the number of entries in each three-year period after the decree has been substantial and that the pace of entries in terms of the number of new offerings coming in each year has been increasing.

* * * *

[fol. 1490] THE WITNESS: Then as to foreign machines offered by manufacturers of domestic shoe ma-
[fol. 1491] chines, I conclude the importing and offering of foreign machines by domestic manufacturers of shoe machines presumably to broaden their lines is primarily a post-decree phenomenon; and of the current offerings of 45, 33 of them have been offered for the first time in this market, in the American market, in the post-decree years beginning 1956 and the number of entries has been substantial but we see no clear-cut trend to the entries there.

Then as to the other foreign machines, we again indicate that this appears to be a fairly recent development and that in aggregate the number of offerings of foreign machines as they have increased in the post-decree period has resulted in offerings which are substantial in amount in relation to the total offerings being made of all types of machines.

And my conclusion in connection with looking at this is that there is no question as to the vigor of entries into new operations since the decree by suppliers of machines offering competition to United. This is the purpose for which I set forth the table.

Then as to Table 4, I asked further the question have the new entries been concentrated in only a few of the many machine operations or are they widely scattered?
[fol. 1492] And I looked at the breakdown of the entries of domestic machines, new machines, non-United domestic machines by stage of shoe making for each of the sub-periods and again drew the conclusion that the new entries into shoe operations have been very widespread. They took place in each three-year period after the decree in each stage of shoe making so that we see them spread widely across the shoe machinery industry.

There is some concentration, more in some stages than in others, but this in general parallels the larger number of operations in some stages than in others, so that it is an expected result.

* * * *

[fol. 1494] The COURT. I had supposed that this as-
[fol. 1495] pect of your testimony was addressed to showing me different patterns of entry in the pre-Decree and post-Decree period, is that right?

The WITNESS. It is intended to show the pattern of entries of the offerings which are currently being made.

The COURT. Yes.

The WITNESS. Only that, sir.

The COURT. That does not seem to me to be of any particular interest. I can really see the interest that there is in patterns of entries of all machine types into shoe machinery operations, but it seems to me very strange to assume that I have any special interest in the patterns of new entries of machines found in December, 1964.

I cannot see why that is of any interest to me.

The WITNESS. I thought it would be of interest because to me the pace of new entries, I inferred, with its magnitude and its increasing pace, was the result of the removal of the artificial restrictions to entry stemming out of your Decree.

The COURT. If you stop at that point, I agree with you.

The WITNESS. So that I was impressed with the
[fol. 1496] magnitude and the pace of new entries.

The COURT. I think that is very important.

The WITNESS. This is what I was trying to present to you.

* * * *

[fol. 1497] The WITNESS. Each of the Tables indi-
[fol. 1498] dicates the distribution of new offerings as of this time, yes.

The COURT. I easily see the relevance of the Tables which refer to 1956 through 1958, 1959 through 1961, 1962 through 1964. That is all I see.

* * * *

[fol. 1499] A As to Table 6, we asked the question about the new entries, primarily, and we asked whether they were occurring as the natural response to economic factors, and if they were we expected that the distribution of the new entries would not be distributed uniformly across all operations but that a far greater proportion would be expected in the operations which were relatively attractive and only a small proportion would appear in the low rating operations, and presented in Table 6 is the distribution of the entries of the new machine offerings of non-United machines, both domestic and foreign, subdivided by the rating of the operation.

And we take the 43 entries in the early three years, and the 56 and the 90 in the Middle and Late three years, as shown by the rating distribution, and the total of the post-Decree entries in the column labeled Total, and here we see, having the top three ratings, that 69 per cent of the entries were in the attractively rated operations and [fol. 1500] only 19 per cent in the unattractive, and we inferred from this that this was a natural response to entry, where you did not have artificial barriers to entry in particular machine operations. This is in comparison to the percentage distribution for all operations. For example, we see for all operations only 41 per cent in the attractive rated operations, in contrast to these new entries of 69 per cent, much stronger in the upper group than in operations as a whole, and only 19 per cent in the low rated operations in contrast to the operation distribution of 46 per cent at the low rated operations.

* * * *

[fol. 1501] The WITNESS. And I want to call your attention, first, to Table 7, and again may I point out here that what I am trying to do is to take the list of suppliers who are currently offering machines and try to see when they enter for the first time into the industry, and so it deals only with those suppliers who are currently offering machines in the market, and by "currently" I mean as of the end of 1964.

I am trying to look at the dates at when they entered. And looking at Table 7, looking at the last column, the figure at the bottom, All Companies, that indicates that

there are 125 separate suppliers other than United listed [fol. 1502] in B-1, the Schedule B-1.

Of those 47 were offering a machine currently being offered before the Decree, or before 1950, and 22 more had offered a machine for the first time in the years 1950 to 1955, and then in the post-Decree years 11 more came in, 1956 to 1958, 19 more, 1959 to 1961 and 26 in 1962 to 1964.

Again, the number of competing companies coming into the market in the post-Decree period is increasing, so that in the last three years you get more than twice as many entries as in the first three years of the post-Decree period. This trend we also thought was a significant response to the changed environment in the industry.

* * * *

[fol. 1503] A (Continuing.) A further subdivision is in this table. We took each of the companies and tried to indicate those which were offering only a single machine, those which were offering two machines only, and those which were offering three or more. From the distribution of those shown at the bottom of the Table, of the 125 68 of the companies are offering only a single type of machine, that is, for a single operation, and 20 more are offering only two machines, and 37 are offering three or more.

We also looked at the picture to try to see whether [fol. 1504] some of those companies which were in the industry before the Decree had expanded the number of offerings in the post-Decree period, so that we subdivided the companies who were in the industry in the pre-1950 period and the 1950-1955 period as to whether or not they had expanded their number of operations in which they were offering machines in the post-Decree period.

Of those 47 who had been in the business before 1950 15 had expanded and 32 had not. Of those who had come in in the 1950 to 1955 period 13 had expanded and 9 had not.

The COURT. It could be, as far as you know, that the expanding companies were all supplying machines for the Fitting Room operations and the contracting com-

panies were supplying machines for, let us say, Pulling Over operations.

The WITNESS. There is no indication from this Table relating to that. You would have to look at that on an operation by operation basis.

A (Continuing.) The other conclusion which we felt, or I felt, appropriate, let us say, from this Table is indicating the number of companies which were in existence before 1950, or which came in in the 1950 to 1955 period, [fol. 1505] who were either involved in only a single operation or perhaps two operations, and who was still in existence with those same single operations or two operations at the end of 1964. My conclusion is that that kind of one operation company or two operation company apparently is a viable business for these companies, else we would not see this kind of pattern of companies with one or two operations still in existence today offering machines of that same kind. So I draw that further inference from this particular Table.

* * * *

[fol. 1507] A (Continuing.) My conclusion is that the pattern of new entries and the expansion of offerings of early entrants attest to the vigor of the response to the removal of artificial barriers to entry, and make clear the changed competitive environment of the industry today as compared to 10 or 15 years ago. These data, however, also indicate the way in which new company entries occur by offerings at first in one or a very few operations, and hence they emphasize the importance of data on individual operations.

[fol. 1508] A (Continuing) The data are also emphatic evidence of the viability of companies with only one or two machine offerings.

I want to go further in the implications on this. I said earlier in these proceedings that data have been prepared from the sample survey of the origin of machines in place in the shoe manufacturing industry as of 1963 and is up-dated to '64. The survey data of the shoe machinery population showed a marked decrease in the proportion of the machines in place which had been acquired from

United or which were of United manufacture as compared to the pattern before 1950.

I want to indicate that the two kinds of data on new entries which have just been presented reinforce the conclusions from the sample survey and help to explain why the proportions of non-United machines have increased so markedly.

* * * *

[fol. 1512] THE WITNESS: I wanted to make one additional point and that is in relation to the companion data from the survey which related to changes over the course of a year, and sources of machine acquisitions by the sample companies are an indication of the source patterns of new shipments of machines, and the much smaller percentage share of the shipments of United as compared to the population figures is also in line with the changed pattern of the number of companies competing in the industry and of the competing offerings now as compared to the years before 1950. And if the shipment share is lower than the population share, it is inevitable that the population share must come down further.

* * * *

[fol. 1521] THE WITNESS: My conclusion about looking at this material on the second-hand market was [fol. 1522] that the decree had been successful in developing a second-hand market for United machines; that it was widespread, nearly as widespread as the new offerings of United.

THE COURT: Just how can you say that? Widespread seems to me to mean that it is an offer of every type or virtually every type of machine. Are you saying that that's the case?

THE WITNESS: Yes, sir. And the table—Table 11. I think it is—indicates 81 percent of the operations in which United is offering a new machine has also been identified as an installation, recent installation of a second-hand United machine in a shoe factory. I mean widespread in that sense both by rating groups and by stages and overall.

THE COURT: The only thing you are uncertain about is the volume.

THE WITNESS: We are not certain about the volume, no, sir.

Now, as to the next section, I had indicated the time I was talking about attractiveness ratings that the purpose of devising the set of ratings was to discriminate among machine operations as to relative attractiveness to try to explain the number of suppliers per operation. [fol. 1523] Table 12 is addressed to that question, and let me indicate how this was prepared. Let us take the upper left-hand corner, which is for machines or offerings given a 3 rating of attractiveness, domestically produced machines. There were 25 offerings of domestic machines, which took the number of suppliers—excuse me—there were 25 operations rated with a No. 3 rating. We took these operations and added up the number of suppliers and computed an average to get the average number of suppliers per operation. We did this for each of the rating classes to get the average number of domestic offerings, the average number of foreign offerings and the average number of total offerings per machine operation.

You will note in the bottom row, which deals with both domestic and foreign machines, that the average number of suppliers per operation decreases as we move from left to right on the high rated operations toward the low rated operations. A difference, for example, between a 3 rating and a 9 rating is 4.4 suppliers for a 3 rating and 1.4 for a No. 9 rating, and the movement is fairly consistent across as we move from the high rated to the low rated operations.

[fol. 1524] I want to emphasize there, or here, that we are aware of the fact that on the small numbers—if we take the top 3 rated groups, 3, 4 and 5, that average would be 4.2.

If we take the bottom 3, the average of those 3 would be 1.9. This is a difference of only 2.3 suppliers per operation.

We could say that 2 is insignificant, but because we are dealing with such small numbers, that small number, which is the difference, is very substantial because we get

twice as many, more than twice as many suppliers per operation than for the low rated boxes or low rated operations.

As I indicated earlier, as the characteristics of the industry preclude a large number of alternatives per operation, these differences become quite substantial, and the attractiveness ratings to me provide a good explanation of the differences in the average number of suppliers per operation. I concluded from this that this relationship of market attractiveness and number of competitors is the expected pattern in any industry or market where the natural forces of competition are not inhibited by artificial barriers to entry and expansion. That the rela- [fol. 1525] tionship exists currently in the shoe machinery industry supports the inference that artificial barriers are now absent and that realistic competition exists.

Because of the fact I used these for that inference, and because of the fact that Table 12 deals both with United offerings and non-United offerings, I wanted to show some contrasts in Table 13 between the distribution of United offerings by these ratings and the ratings of non-United equipment or non-United offerings. Table 13 shows the number of offerings of United machines by each rating class, and similarly corresponding figures for other domestic machines and foreign machines.

If we compare the distributions, we note that the distributions of the offerings of non-United domestic machines and non-United foreign machines are predominantly in the more attractively rated operations, especially in contrast to United where over half of United's offerings are still in operations which are in the unattractive group, that is 7, 8 and 9.

If we add the top three percentages for other domestic machines we see 67 per cent of their offerings in the [fol. 1526] attractive rating group, and for foreign the same figures give us 68 per cent there, and for United only 42 per cent, and the corresponding figures, if we look at the low end, where United has 50 per cent of its offerings in the unattractive, relatively unattractive operations, and only 22 per cent for non-United machines and 21 per cent for foreign machines.

So that this is additional information here that the offerings of non-United machines have tended to go towards those operations which are the relatively more attractive parts of the market and apparently have not been deterred by artificial restraints.

* * * *

[fol. 1527] A (Continuing.) Table 14 is simply a comparison of the distribution by ratings of operations of all operations and United's operations, and the only thing I want to call your attention to is the startling similarity of the two percentage distributions, and this is simply, I think, an indication of the broad line of United, and the fact that so long as United continues to offer machine types for even the little used, unpopular and possibly declining operations, its distribution of offerings by ratings will continue to show a relatively heavy concentration at the unattractive end of the rating scale.

And one final comparison on this same point is in Table 15.

In Table 15 we compare United's percentage distribution by ratings with the distribution of all non-United offerings, and again with a comparison simply of the post-Decree entries of offerings of non-United, and finally second-hand machines.

And to summarize briefly, the heaviest concentration at the attractive end comes with the post-Decree non-United [fol. 1528] offerings, slightly more toward the attractive end than all non-United offerings, much more so than with United's offerings, and the similarity of second-hand offerings and United's new offerings very close.

An additional point I would like to make about the similarity of the distribution of second-hand offerings and United's is where we see a relatively small proportion of the non-United new machine offerings at the operations which are at the unattractive end of the scale. We see a very heavy proportion of second-hand offerings. And I conclude there that second-hand offerings are providing an additional source of supply in those operations where the alternatives in the form of offerings of new machines are the smallest, and hence this part of the market, the second-hand offerings have come in at the type of opera-

tion, the rating of operation where there was the least alternatives in the form of new machines.

I am making this as a general point.

Finally, as a brief summary for this section, it can be said that the relative economic attractiveness of the various operations of shoemaking provides the major expla- [fol. 1529] nation of the differences in the number of suppliers per operation. The nature of the occupancy patterns of particular operations by offerings of suppliers other than United also suggests the absence of artificial barriers to entry into the industry or into individual operations.

Finally, the development of the second-hand market for United machines and the pattern of offerings of second-hand machines has resulted in an alternative source of supply of machines being available to shoe producers where the incentive to entry by a manufacturer of new machine is the least.

I turn now to the next section. We have been focusing or talking, at least, thus far in summarizing data and always relating the data to particular machine operations, and the various machines offered for a given operation represent reasonably close substitutes for each other in shoemaking, but the alternatives open to shoe producers are typically broader than those available only for the operation itself. One purpose of the charts in Schedule A was to portray visually the existence of alternative processes, sub-processes and operations in shoemaking. [fol. 1530] Shoe manufacturers have the opportunity to select machines not only from the alternatives available for a particular machine operation, but to choose also from alternative operations, from alternative sub-processes, and from alternative methods or processes of shoemaking.

For how many manufacturers any particular choice is important, is a question that cannot be answered generally or in statistical terms. It depends upon a manufacturer's present equipment and on his market commitments.

Something can be said, however, about choices beyond a particular machine operation level, and there can be no doubt that they enhance the effectiveness of competition.

In the first place, a broader range of such alternatives are to be found in the Lasting and Sole Attaching Stages. Here they are most numerous in the larger and more rapidly growing processes; for example, in the making of flat lasted shoes.

Second, the widened area of choice from one machine operation to several, always adds to the number of offerings from which a shoe manufacturer can select machines. [fol. 1531] Third, the additional offerings come generally from additional suppliers. Though some of the suppliers for an operation may also be suppliers for the alternative, there is less duplication than addition.

More companies, hence, are vying for the trade of the shoe manufacturer.

* * * *

[fol. 1532] The WITNESS. I would like to cite, however, at least some data relating to instances in which there might appear to be no alternative machine source open to a shoe manufacturer. These are the operations in [fol. 1533] which there are only a single supplier offering new machines.

In connection with Table 1, I indicated that there were 53 of these operations, and these are tabulated in Table 16. For 45 of those operations United is the sole supplier. Another manufacturer is the sole supplier in 8 operations.

The numbers here are distributed by attractiveness ratings. In both distributions the proportions of operations with unattractive ratings is very high. For United 34 out of the 45 operations in which they are the sole supplier are in the so-called unattractive group with the least attractiveness to competing manufacturers.

In the case of another manufacturer being the sole supplier, it is 4 out of 8. The mere fact of the unattractive ratings indicates that these are operations with little demand, frequently because most shoes are being made using other machine operations.

The ratings suggest there is no incentive for other manufacturers to develop and offer machines in competition with the current supplier.

Another limitation on the possible market power of the [fol. 1534] single supplier for these operations is the

availability of second-hand machines. Second-hand machine competition of United machines has been identified in 33 of the 45 operations in which United is the sole supplier.

Because only United's second-hand machines were identified, we could not establish the existence of such competition for the 8 operations where another manufacturer is the sole supplier simply because we could not gather such data.

And again, as a summary, there appear to be few, if any, instances of shoemaking operations for which there are not at least some alternative sources of machines.

The most obvious alternatives are the offerings of new and second-hand machinery for the given operation, but it is necessary to consider also the equipment available in alternative operations, sub-processes, and processes.

When these other alternatives are considered, the concern for the possible market power inherent in being the sole supplier of new machines for an operation practically disappears.

Now as a final section, this will not deal with the al- [fol. 1535] ternatives available to shoe manufacturers directly but with the characteristics of the companies offering machines in the shoe machinery market.

Because there has been some comment on the scope and characteristic of United's offerings, the focus here will be on the characteristics of the companies competing with United.

Before turning to specific comments I want to stress two points. First, this is an industry involving about 180 separate machine operations, each for the most part requiring a type of machine designed and built for that particular function. No company offers machines for every operation for the manufacture of every kind of shoes.

A company that did would have about 180 separate and distinct product types of varying degrees of complexity and in effect would be competing in the approximately 180 operations of the industry.

Because of this degree of sub-division of the business, there can be and are companies specializing in greater or lesser degree in parts of the total industry.

The industry is one in which a company can be effec-
[fol. 1536] tive in one or several parts without the necessity of participating in any other specific part of the business.

If a choice of a company of Company X for one operation forced the selection of a machine of the same company at another point or for many other operations, then participation by a company in only one or a few operations would be difficult.

But this is not the case, and for the most part both United and every other company face different patterns of competition in each of the machine operations in which they offer equipment.

The second point is that it was noted earlier that the magnitude of the demand for machines for most of the machine operations is small, as measured by annual shipments or the total number of machines required.

The average number of suppliers of new machines per operation is also small, about 3.

The arithmetical consequence of this situation is either a very small number of wide line companies or a sizable number of companies with narrow lines of machines or some combination of the two.

The record indicates to me a surprisingly large number
[fol. 1537] of companies competing with United, 125 in total, and because of that number most companies can only be involved in very few operations.

Because only 371 offerings of machines were being made by companies other than United around the end of 1964, the average number of offerings per company was just under three.

* * * *

[fol. 1541] THE COURT: At this point the reporter can copy the table which is at VII-3.

	Domestic Machines	Foreign Machines	Domestic and Foreign	Total Operations
Allied	7	5	1	13
Compo	21	15	3	39
Ludlow	3	2	—	5
Schwabe	8	18	1	27

THE WITNESS: Allied is offering 13 types of machines, 7 of its own manufacture, 5 foreign and for one operation both domestic and foreign.

THE COURT: That appears in the table. You don't have to recite it again.

THE WITNESS: And similar things for these others.

Now, in each of these cases the contribution of imports to the breadth of these companies' lines is relatively quite substantial and it is clear that the effect of importing is to broaden a line because almost always the foreign machines are offered in operations additional to those being [fol. 1542] supplied by the companies' domestic machines.

Now, a second feature of the picture revealed by the company data in the listings is the diversity among the companies as to the operations and combinations of operations in which they participate. This clearly is not an industry in which one follows the leader in choosing operations in which to compete. There is clearly independence of decision among suppliers in this respect. This feature of the data is summarized briefly in Table 18. It is difficult to summarize it from this point of view but at least it indicates one type of summary in Table 18.

Table 18 attempts to distribute the number of suppliers other than United and show the number of their offerings, the number of different operations supplied, and the number of stages in which machines are being offered.

For example, there are 23 suppliers offering machines in 2 stages. They involve 70 operations and 60 of them are non-duplicate to show the extent of the diversity, and we get the same picture shown for each of the other groups by number of stages.

And the point to be made here is that diversity means [fol. 1543] the interests of the various companies are to urge the use of their particular operations as opposed to those in which they are not represented, and this emphasizes the importance of rivalry among machine operations.

This concludes the presentation of the tables and I could restate the conclusions but I think they are already in the record.

THE COURT: Well, at this point I am sure you would like to have copied in VIII-1 and VIII-2; is that correct?

MR. WHIPPLE: Yes. That would be helpful, your Honor.

(VIII. SUMMARY OF CONCLUSIONS

This series of studies relating to the "changes during the last decade in demands and requirements of the domestic shoe manufacturing industry for machines for shoe production; and changes in the number and types of United and non-United equipment available" and relating to "the effect of this decree . . . in establishing workable competition" has yielded several significant con- [fol. 1544] clusions, which may be summarized as follows:

a) The character of the shoe and shoe machinery industries and the magnitude of demands for machines for a given operation are such that a large number of competitors per machine operation is not economically feasible.

b) Since the decree the number of competing offerings of non-United equipment has expanded to such an extent as to bring about a marked reduction in United's percentage share of total offerings.

c) The response to the removal of artificial barriers to entry in the form of new offerings for particular machine operations, in the form of new companies, domestic and foreign, entering the industry, and in the form of older companies expanding the range of their offerings has been prompt, vigorous, and at a steadily increasing pace.

d) The new offerings of non-United equipment have been predominantly for the operations whose relative economic attractiveness has been high; United's competitors [fol. 1545] have tended to avoid the unattractive operations in which United was already offering new machines and second hand machines were available.

e) Even though the bulk of United's large number of competitors offer machines for only one or two operations, nevertheless the nature of the industry and the

continued existence of such companies attest to the viability of such competitors.

f) The differences in the patterns of number of competitors per machine offering are explained largely by the relative economic attractiveness of these various operations and are the expected patterns resulting from competitive forces not inhibited by artificial barriers.

g) The existence of alternative processes, sub-processes, and operations of shoemaking to any given operation reduced markedly the market power inherent in sole occupancy or occupancy by only a few suppliers of new machines for a particular operation.

h) The development of a widespread second hand mar- [fol. 1546] ket for United's machines has enlarged the number of alternative sources of machines open to shoe manufacturers, especially for those operations in which the number of suppliers of new machines is very small.

These conclusions in aggregate show the significant effect of the provisions of the decree in altering the nature and extent of competition in the shoe machinery industry and in enlarging substantially the alternative sources of machines open to shoe manufacturers. And the nature of the trends which are evident suggest that the competition which United will face, in the future, will be stronger than at the end of 1964.).

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[fol. 1591]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 7198

WYZANSKI, Ch. J.

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED SHOE MACHINERY CORPORATION, DEFENDANT

APPEARANCES:

Margaret H. Brass, Esq., and Robert J. Ludwig, Esq., and W. Randall Elliott, Esq., Attorneys for the Government.

Robert Proctor, Esq., Ralph M. Carson, Esq., Taggart Whipple, Esq., Louis L. Stanton, Esq., and Charles Gerlinger, Esq., Attorneys for the Defendant.

John Hally, Esq., Attorney for amicus curiae New England Shoe and Leather Association.

Court Room No. 6
Federal Building,
Boston, Massachusetts,
October 28, 1966

* * * *

[fol. 1592] BERTRAND FOX, Resumed

CROSS EXAMINATION

Q (By Miss Brass) * * *

* * * *

[fol. 1611] Q Now, Dr. Fox, isn't it a fact that when there is only one company in a particular field, that this is a very strong indication that the barriers of entry are high?

A It is a very strong indication that this is unattractive and perhaps the natural barriers are high. Certainly [fol. 1612] it has not attracted anyone else than the one person.

Q How do you know, Dr. Fox, that they are natural barriers and not artificial barriers as you defined it?

A I do not know as to any specific box. On the other hand, where I have observed data showing substantial numbers of entries in a variety of operations and the fact that they have gone into a very widespread number and variety of operations, and where I have noted that the entries have been concentrated in those operations where the attractiveness ratings—I am getting the attractiveness figures mixed up with low and high here.—I infer from this that there is an absence of artificial barriers because the entrants are taking place in what seems to me the natural response to competitive forces, and this is the kind of a pattern I would expect in a competitive market. Hence I infer the absence of artificial barriers from the nature of the entries that are taking place in this business.

* * * *

[fol. 1622] Q Thank you. Wouldn't it also be a factor in your decision whether or not the operation was attractive to you as a potential entrant if a dominant supplier [fol. 1623] had, let us say, 10 to 20 times the resources that you have?

A As I have tried to present here, our objective was to try to give a picture of this industry by operations in terms of the kind of machines that a manufacturer needs to perform certain functions.

These functions, or each of the functions is in a sense kind of separate, and the suppliers are trying to provide machines for that function, and the fact that there is a supplier who is very large and may be supplying a dozen other functions does not necessarily give him an advantage in supplying this particular function.

A supplier with much smaller resources may be the strongest competitor in this particular function, without any reference to work in other functions.

We can have, I think, in this business men offering machines, designing machines, producing machines for one function, two functions, three functions, and paying no attention to any of the others.

There are many of the producers in this business whose primary focus seems to be in another business but who are producing machines for one or two functions and [fol. 1624] competing very effectively in these functions.

* * * *

[fol. 1625] Q Thank you, sir.

Now, we have been talking about barriers to entry. Isn't it also true that when there is a dominant supplier in a particular field of operations that that dominant supplier might cut its price when a new entrant comes into that field, and that this would be a factor that, as a potential entrant, you would have to take into consideration?

A If this particular supplier, already in the business, is the sole supplier in that field, I think this is a possibility that you might have to take into account. If he is one of several, I think the opportunities, the possibilities of doing this are negligible.

* * * *

[fol. 1655] This business is not like the aluminum business or copper business where the product is essentially homogeneous. This is a business made up, you might say, almost of 187 separate sub-businesses where the individual firms that are involved in some way are—it is hard to say that some are competing against each other one. Some are competing against United; some are not; some are competing against each other; some are not. But I think here in my opinion one has to look at the various operations involved because here is where the buyer is facing his choices and we have to look at it there.

* * * *

[fol. 1679] Q Now in your opinion as an expert and an economist would you say that where there is one large company, which is many times larger than any of its competitors, that this would indicate that that company has market power?

A That amount of information by itself for this business would not lead me inevitably to that finding or that result. This is a business, and I cannot emphasize this strongly enough, the way I look at it, that in essence almost consists of 187 different businesses, and the real competition of substituting one machine for another is in these cells one after another.

The fact that one is in many cells or many of these sub-markets of operations, does not necessarily give it power in each of these individual machine operations.

* * * *

[fol. 1682] The WITNESS. No, sir. I believe that there is one market with a very large number of sub-markets, and that one cannot treat this as one market for a homogeneous product.

This is not like an aluminum market or a wheat market. It is this difference, I think, which is extremely important for this particular industry, and it is also terribly difficult to get appropriate measures for it.

* * * *

[fol. 1691]

REDIRECT EXAMINATION BY MR. WHIPPLE, * * *

* * * *

[fol. 1704] A Yes. I think I indicated the relationship between the total number of offerings which were then being made and the average number of suppliers of new machines and the number of operations and I said the arithmetical consequence was either a very small number of wide-line companies or a sizeable number of companies with quite narrow lines of machines or some combination of the two. It is possible to amplify it to have more than one wide-line company.

What I am not sure of is how many wide-line companies, whether you can add one and still have the same number of offerings by the suppliers who are offering machines for one or two operations at the moment. The crux of the thing is the situation in the individual operations and, as I have indicated, I don't think that some

of the machine operations can support an additional number of suppliers so that if you had an additional wide-line supplier, you might very well have a decrease in the number of narrow-line suppliers.

THE COURT: You are saying if I follow the Government's suggestion of breaking United into three parts, I might be driving competitors out of the market?

THE WITNESS: This is my belief, sir.

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 7198

UNITED STATES OF AMERICA

v.

UNITED SHOE MACHINERY CORPORATION

OPINION

April 11, 1967

WYZANSKI, *Chief Judge:* The Government and United Shoe Machinery Corporation have each filed a petition for modification of this Court's decree of February 18, 1953, affirmed by the Supreme Court of the United States May 17, 1954, and subsequently modified July 12 and September 17, 1954. See *United States* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295 (D. Mass.), aff'd. *United Shoe Machinery Corp.* v. *United States*, 347 U.S. 521.

The Government's petition seeks to have United dissolved into two companies. United seeks to have the restrictions now imposed limited to requirements of sale of any machine types offered for lease, maintenance of a reasonable commercial relationship between sale terms and lease terms, separate charges for service, and avoidance of restrictive clauses such as the full capacity clause. Both petitions rely upon the following language in paragraph 18 of the decree:

> "On C Day [December 23, 1964] both parties shall report to this Court the effect of this decree, and may then petition for its modification, in view of its effect in establishing workable competition. If either party takes advantage of this paragraph by filing a petition, each such petition shall be accompanied by affidavits setting forth the then structure of the shoe machinery market and defendant's power within that market."

Threshold questions are what is the scope of this Court's power in these proceedings, what standards are to be applied in the exercise of this power, and what issues are before this Court. With respect to the first two questions an authoritative answer is given by *United States* v. *Swift & Co.*, 286 U.S. 106. A court can modify a continuing injunction not on the basis of conditions that existed at its making, but only on the basis of new and unforeseen conditions. Moreover, the court should require a clear showing of grievous wrong. In *Swift*, where the Supreme Court denied a defendant's application to have a decree modified, it enunciated the criteria in the following words (286 U.S. at p. 119) applicable *mutatis mutandis* to a plaintiff's application:

> "There is need to keep in mind steadily the limits of inquiry proper to the case before us. We are not framing a decree. We are asking ourselves whether anything has happened that will justify us now in changing a decree. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting. Life is never static, and the passing of a decade has brought changes to the grocery business as it has to every other. The inquiry for us is whether the changes are so important that dangers, once substantial, have become attenuated to a shadow. No doubt the defendants will be better off if the injunction is relaxed, but they are not suffering hardship so extreme and unexpected as to justify us in saying that they are the victims of oppression. Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned."

Swift has been followed consistently. *Morse-Starrett Products Co.* v. *Steccone*, 205 F. 2d 244 (9th Cir.); *Bigelow* v. *Twentieth Century-Fox Film Corp.*, 183 F. 2d 60 (7th Cir.); *United States* v. *Lucky Lager Brewing Co. of San Francisco*, 209 F. Supp. 665 (D. Utah).

Nothing in paragraph 18 of the decree departs from *Swift's* teaching or purports to confer upon this Court a broader power to alter its decree, or authority to apply different standards. The requirements remain (1) a clear showing of (2) grievous wrong (3) evoked by new and unforeseen conditions. Indeed if paragraph 18 gave this Court the power to alter a decree on any lesser showing the decree would not have been final and appealable to the Supreme Court.

What paragraph 18 does is to direct the parties to an issue: the decree's "effect in establishing workable competition." The phrase was unfortunate because it has no precise legal meaning. But if paragraph 18 be read against the accompanying opinion, *United States* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295, it is apparent that what the Court was inviting was information as to how successful the decree had been in gradually eroding United's 1953 power to monopolize the market. The opinion makes it plain that the object of the decree was during a ten year period not to restore so-called workable competition but to move toward establishing it.

The issue now raised requires that this Court first state what it knew at the time of the decree and what it then chose.

The following were among the facts of which this Court was aware in 1953. United had by far the largest financial and patent resources in the shoe machinery industry. It was the only company that offered a wide line of machine types. If United were allowed to continue leasing, even on a basis that gave shoe factories an alternative to purchase the leased machine at an equivalent price, almost all shoe factories would prefer to lease their new and more complicated machines. That preference would enable United to continue its visits to most shoe factories. It would permit United to place machines on lease on an experimental basis. It would make it difficult for any competitor to succeed in connection with the marketing of complicated expensive types of machinery for which there was a thin market unless the competitor had resources adequate to offer a long line of machine types, to accept compensation in the deferred form of rental pay-

ments, to make its lease terms the commercial equivalent of its sale terms, and to withstand the at least temporary inconvenience of having leased machines returned after a short rental period. In short, this Court was quite cognizant of the fact that permitting United to continue as a single enterprise engaged predominantly in leasing rather than selling made it almost certain that at the end of a decade, absent a strong outside challenger, United's market power would be merely diminished not destroyed.

Yet this Court chose not to dissolve United, and not to prohibit leasing, but merely to purge the leases of certain specific restrictive clauses, to require United to offer lessees the alternative of purchasing, and to require United to take certain miscellaneous steps which need not now be recited. Among the reasons that this Court made this choice were that the Supreme Court had approved the constitution of United as a single enterprise, that it had permitted United to proceed with leasing as an exclusive method of distributing machines, that United had engaged in no predatory or immoral practices, and that United owed much of its position to superior products and services, to its own inventions, and to other results of United's skill, ability, and efficiency.

Both parties have submitted requests for findings. They have been helpful in directing this Court's attention to what the decree has accomplished, to what are the dynamics of the 1963-1964 [hereafter sometimes called "the present"] shoe machinery market, to the freedom of choice now enjoyed by the shoe factory users of shoe machinery, and to the freedom of competitors in the present market structure. But those topics need not be covered by this Court in detail and hence, so far as not granted herein, all requests for findings are denied.

Paragraph 18 of the decree by referring to affidavits indicated that this would be a summary proceeding. It is important not to plague anti-trust law by establishing a precedent which might lead to full scale second trials of anti-trust cases on every claim that, as shown by its effects, an outstanding decree was too lenient or too severe. The only findings which this Court deems appropriate and necessary follow in numbered paragraphs.

1. United complied fully with this Court's decree.

2. Before the 1953 decree United's share of the shoe machinery market by any measure was about 85 per cent. While in 1953 there was no specific finding with respect to United's then share of the revenue from shoe machinery sold and leased, it is a fair inference that, because of its strong position in the distribution of major machines yielding the largest revenue, United's share of the total revenue exceeded 85 per cent. In 1963 it had declined to about 62 per cent of the current shoe machinery market.

3. That market now includes machines for the manufacture of vulcanized rubber because such machines are competitive with injection moulding machines and other shoe machinery, are used in conventional shoe factories, and are used for both leather-upper and fabric-upper footwear.

4. The aforesaid revenue percentage of the shoe machinery market is a far more satisfactory index of share of the market than any other suggested. That index is far more illuminating than one based on a mere count of machines in position in shoe factories without distinguishing the machines by type, or value, or yield. It is also more satisfactory than one based on the value of annual shipments, an index which disregards the payment of rentals upon or conversion prices for machines shipped in previous years. It is a better index than one computed by the use of tables with 30 classifications according to the major and minor shoe machinery processes of the pre-1953 decree period, and referred to in the 1953 opinion, 110 F. Supp. at pages 304-305, 306. Those classifications do not reflect the extent to which technological changes require that there be grouped in two over-all classifications the machines used in competitive processes for (a) lasting and (b) sole attaching. Moreover, insofar as a tabular presentation is applied to machines in position in shoe factories in 1963 it fails to recognize that, unlike the situation in 1953, machines of United origin, not necessarily being on lease, are not necessarily sources of current payments by shoe factories and are not part of the current market.

5. There are many indicia confirming the correctness of the conclusion derived from the revenue index that United has about three-fifths to two-thirds of the shoe machinery market now, that is, a shrinkage of more than a quarter of the share of the market it had in 1953. (a) Although during the last decade the number of shoes produced annually rose, and therefore it may be inferred that the value of shoe machinery in the shoe factories rose, and although the value of the dollar declined, nonetheless United's total annual revenues from shoe machines sold and leased, from the sale of parts, and from repair services in 1955 was certainly less than before the decree. Indeed the combined lease and sale figures for United shrank from $32 million in 1955 to $24 million in 1963. During the same 1955-1963 period United's 12 most important domestic competitors doubled their gross revenues. (b) United's decline in annual earnings before taxes of the Shoe Industry Group, after elimination of proceeds from conversion sales, had dropped from over $11 million at the time the decree became effective to less than $6 million at February 29, 1964. (c) United's employment declined approximately 30 per cent in its Beverly plant and 40% in its service branch. (d) Of the machines shipped in 1963 in the 30 classifications shown in the tables used in 1953, United supplied 51.7 per cent, which is a figure combining 65 per cent of so-called major machines and 42.3 per cent of minor machines. (e) Of the machines now in shoe factories about 54 per cent were of United origin, but only 47 per cent were being leased from or had been bought from United.

6. Since the decree the number of United shoe machines on lease in domestic shoe factories fell from 91 to 26 thousand. Of the machines in domestic shoe factories only 17 per cent in 1963 were on lease from United. While approximately 90 per cent of the machines shipped by United in the post-decree decade have been on lease, a substantial number of them are ultimately bought by shoe factories. The reasons that most shoe factories initially lease rather than buy machines of the expensive types are not because the lease terms are not commercially related to sale terms, but because shoe-makers prefer to

have the right easily to dispose of expensive machines and because they lack either the financial ability or the inclination to invest substantial capital in shoe machinery. The continuation of the pattern of leasing expensive machines is a response to the demand from the shoe-making market which has 785 enterprises, many of them of modest resources. Without leases many of them could not continue in business.

7. The decree has tended to open the market by promoting the return of United machines by customers. For example, the total returns to United by customers of so-called major machines exceeded the total shipments by more than one-third during 1955-1964. This trend promotes competition by making the shoe factory a more frequent customer for shoe machinery.

8. In the decade 1953-1963 shoe factories purchased over 53,000 machines which they had previously leased from United. Most of the conversions occurred soon after the decree. But in the tenth year over 1300 machines were converted, and in 1964 the number was 678, which was more than one quarter of the machines United leased that year. Each purchase reduces United's power by making it likely that the machine will utimately enter the second-hand market.

9. United has faced important competition from an active second-hand market, largely of its own machines. In 1963 that market sold about $3 million in machines, which stands comparison with United's revenues of $22 million from leases and $1.6 million from sales. The second-hand market is sufficiently vigorous so that it is not unusual now for shoe factories to start in business utilizing many machines originally of United manufacture, without obtaining a single machine from United.

10. At the end of 1955-1964 period there were about 126 suppliers of new shoe machines. The pace of entry into the market in each three-year period after the decree increased: from 11 to 19 to 26, or a total of 56 companies. None of these, however, is a company offering a wide line. Indeed while United offered 115 types of machines on current terms and 24 types on application, Compo Shoe Machinery Corporation offered only 22, In-

ternational Shoe Machine Corporation only 5, and most companies only 1. The small companies have shown that in many sectors of the industry a machine manufacturer can be effective in one or several parts of the industry without the need of participating in other parts.

11. The unanimous and representative testimony of shoe makers is that there now exists in the shoe machinery market sufficient competition to allow the shoe manufacturers to select machinery as they wish on the merits of the machines available and in accordance with the processes they select to meet the various style changes in the consumers' market. In particular, United is subject to constant full and free competition from competitors' machines in toe lasting, side lasting, sole attaching, pulling over, and bottoming. That kind of competition reveals that several of the 18 sub-classifications of "major machines" are in competition with one another and that percentage calculations based upon each separate classification are misleading unless machines which are in competition with one another are grouped together, thus reflecting the true character of the shoe machinery market.

12. In 1953 United had and exercised power to exclude competitors from every significant classification of shoe machinery except cement sole attaching machines.

13. However, by 1963 United was not in fact exercising, and indeed was incapable of exercising, exclusionary power over the entire market. This is shown not merely by its reduced share of the market, by its altered leases, and by the growth of competition from domestic manufacturers, importers, and second-hand machinery but by the following miscellaneous indicia.

(a) With respect to the lasting and sole attaching sectors of the market cement processing, injection molding, and direct-mold vulcanizing had become competitive with the seven older techniques,—McKay, Nail, Turn, Goodyear Welt, Stitchdown, Prewelt, and Lockstitch. Those older techniques, where United offered over 90 per cent of the machine types, declined from 55 per cent of the relevant sub-market in 1950, to 42 per cent in 1955, to 33⅓ per cent in 1963. In the newer techniques, United

does not hold a commanding position. The result has been that United cannot control competition in the lasting sector as a whole or in the sole attaching sector as a whole.

(b) Of the shoe machines in position in shoe factories only 51 per cent had been shipped by United and only 17 per cent were covered by United leases. That finding, as already noted, does not show United's share of the entire market. But, inasmuch as from other evidence it appears that United's share of so-called major machines is far higher than its share of minor machines, it follows that in minor machines as a whole, and probably in most categories of minor machines, United has no exclusionary power.

(c) Of the shoe machines shipped in 1963, United's share by value may be as little as 48 per cent, and certainly is not much over 50 per cent. Here again, that finding, as already noted, does not show United's share of the entire market, because it eliminates current revenues from machines shipped in earlier years. But, in view of other evidence indicating that United's share of so-called major machines is far higher than its share of minor machines, it follows that in minor machines as a whole, and probably in most categories of minor machines, United has no exclusionary power.

14. In 1963 there were certain sectors of the shoe machinery market in which United was without significant competition, but it does not follow that United's position in those sectors was a result of United's exclusionary power or made competition unworkable. Indeed, it is more reasonable to conclude that the want of competition was due to the absence of a challenger of adequate, but not unusual, financial resources, skill, ability, and efficiency.

15. In almost every one of the 45 of the 187 operations in domestic shoe factories where United was the sole source of supply fewer than 6 machines a year are demanded and the operation, looked at alone, is not economically attractive. What is far more important, the operation is shown to be competitive with other operations for which other sources than United supply machines. On

this record, it is inferrable that, for the purpose of the anti-trust acts, the machines used in the 187 operations ought to be combined to constitute perhaps as few as 7 markets, one for each stage of shoemaking. It is not clear whether after that was done United would have a dominant position in some of the sub-markets thus constituted.

16. If United does have a dominance in some of those sub-markets such dominance is not due to "restraints of trade" in the technical sense. There is a variety of causative factors such as United's financial capacity to offer lease terms commercially equivalent to sales terms on the same machine types, United's broad line of machine products manufactured in one plant (which permits United with economic advantage to supply machine types for which there is a small annual market and which also permits United to set for different types of machines terms which reflect different rates of profitability), United's constant contacts with most shoe manufacturers as a result of the large volume of machines United ships annually and the large number of leases it has outstanding, and United's excellent products, superior skill in merchandising, efficiency in administration, inventions and know-how. Every one of those factors was known to this Court when it entered its decree in 1953. New information with respect to the operation of those factors since 1953 shows that they have not individually or collectively had an unforeseen effect or worked a grievous wrong.

From the foregoing findings of fact this Court concludes that the 1953 decree has operated in the manner and with the effect intended. It has put in motion forces which, aided by new technology, have eroded United's power and already dissipated much of the effect of United's monopolization.

In some sectors of the market, competition is already flourishing. In the sectors where it is not flourishing, all artificial barriers have disappeared and the position enjoyed by United is chiefly traceable to the fact that it has not yet been challenged by a competitor of financial resources of any magnitude. United follows no practice

and enjoys no significant advantage which could preclude or restrain competition by an enterprise of a size comparable with leading machinery companies in other industries, that is, with resources adequate to offer lease terms commercially equivalent to sale terms and to offer simultaneously machine types in several categories where the annual demand is too thin to be economically supplied separately. The apparent reason why no such competitor has appeared is that compared with rates of return in other machinery markets, the rate of return in the shoe machinery market is unattractive.

It cannot rightly be said that a market or a sector thereof is, in the legal sense, not open to competition where an effective challenge may be made by an enterprise of resources common in comparable fields.

While this Court now has before it the facts of the decade 1954-1963 which were not known in 1953, nothing new, aside from the updating of the data, is involved. United has not created new barriers. In 1953 the resources of United in absolute terms were substantially the same as, and in comparative terms substantially less than, they are now.

It may have been an error in 1953 not to have dissolved United rather than to allow sectors of its power to be dissipated by small competitors, and to leave other sectors of power to be effectively attacked only when a small competitor became large or a large competitor appeared. But the choice was made in 1953 for reasons already adequately explained.

What the Government is complaining of is not that the decree did not work as expected, but that working in the foreseeable and intended way the decree did not accomplish what the Government had originally prayed for and what this Court had rejected. In short, the Government petitions that the decree be reversed because this Court erred in 1953. On the authority of the *United States* v. *Swift & Co.*, 286 U.S. 106, 119, the Government's petition is denied.

United's petition stands no better. United wants to adjust the decree on the ground that the purposes of the decree have been accomplished and milder restraints are

now in order. But the premise is unsound. The decree is still working at its long-range task of freeing the market from all consequences of United's monopolization and keeping the door wide open for the arrival of an adequately provided challenger. Until there are competitors throughout the market, the decree should stand unmodified. United's petition is also denied.

Before concluding, this Court expresses its appreciation of the brief filed by *amici curiae*, the National Footwear Manufacturers Association and the New England Footwear Association. Their analysis of this case has greatly influenced this opinion. Their assurance that their clients, who represent substantially all the shoe manufacturers, who are among the chief intended beneficiaries of this Court's decree and who have had an unequalled opportunity daily to observe its effects in the last decade, are content with its operation and do not want it modified, gives added ground for leaving the decree undisturbed.

Petitions denied.

CHARLES E. WYZANSKI, Jr.,
Chief Judge.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 7198

UNITED STATES OF AMERICA

v.

UNITED SHOE MACHINERY CORPORATION

ORDER

April 11, 1967

WYZANSKI, *Chief Judge:* In accordance with the opinion filed this day, the petition of United Shoe Machinery Corporation and the petition of the United States, each seeking modification of the decree herein, are severally denied.

CHARLES E. WYZANSKI, Jr.,
Chief Judge.

SUPREME COURT OF THE UNITED STATES

No. 597, October Term, 1967

UNITED STATES, APPELLANT

v.

UNITED SHOE MACHINERY CORPORATION

APPEAL from the United States District Court for the District of Massachusetts.

The statement of jurisdiction having been submitted and considered by the Court, probable jurisdiction is noted.

December 4, 1967

Mr. Justice Marshall took no part in the consideration or decision of this case.

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